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FARM CREDIT SYSTEM FINANCIAL SAFETY AND SOUNDNESS ACT OF 1991

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Mr. Leahy, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 1709]

The Committee on Agriculture, Nutrition, and Forestry reports an original bill (S. 1709) to amend the Farm Credit Act of 1971 to enhance the financial safety and soundness of the Farm Credit System, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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Summary of Major Provisions

The major provisions of the bill are briefly described below.

S163-4

The Committee bill amends the Farm Credit Act of 1971, building on the major reforms passed in 1987, to enhance the financial safety and soundness of the Farm Credit System (FCS). The bill ensures that the obligations issued under the authority of the Agricultural Credit Act of 1987 to assist troubled Farm Credit System institutions are repaid by the Farm Credit System and not borne by taxpayers.

This bill takes into account concerns raised in reports on government sponsored entities (GSE's) issued by the Department of the Treasury, the General Accounting Office and the Congressional Budget Office. These reports were requested by Congress under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) and the Omnibus Budget Reconciliation Act of 1990 (OBRA) in an effort to examine the financial exposure of the federal government posed by GSE's.

The bill requires Farm Credit Banks to set aside funds on a yearly basis to ensure that financial assistance is repaid to the U.S. Treasury when this debt is due. Under this framework, the FCS is required to begin immediately to build capital for the repayment of all special purpose bonds issued for financial assistance to FCS institutions and any other obligations stemming from that assistance. The Farm Credit System Financial Assistance Corporation has issued approximately $1.3 billion in bonds for assistance to the Farm Credit System—all of which will be repaid, with interest.

The bill also establishes procedures to impose stricter loan and risk management standards than those imposed by the Farm Credit Administration (FCA) should the FCS itself fail to adopt such standards. Institutions which do not meet those higher standards would be subject to higher premiums which will be used to help pay the FCS Financial Assistance Corporation (FAC) debt. Once the FAC debt is repaid this money will be added to the Insurance fund, enhancing the reserves of the FCS Insurance Fund.

The legislation also addresses issues related to the Federal Agricultural Mortgage Corporation (Farmer Mac) which was created in 1987 to establish a secondary market for agricultural loans. Under the 1987 Act, the FCA was given limited regulatory authority over the operations of Farmer Mac because under the strict terms of the Act, much of the potential risk of any secondary market transaction is retained by the lender that originates the loan. Nonetheless, all of the reports raised concerns about the sufficiency of FCA's authority over Farmer Mac. The bill provides the FCA with additional regulatory powers and authorities to protect the financial integrity of the secondary market if Farmer Mac's capital falls below established levels. It also sets minimum capital levels for Farmer Mac and creates an Office of Secondary Market Oversight within FCA to improve the regulation of the FCS secondary market.

The bill further attempts to protect taxpayer resources by requiring that association capital will be called upon to shore up financially weak FCS banks if the System's insurance fund has fallen below 80% of the secure base amount and other conditions are met. The secure base amount is the minimum amount established for reserves in the insurance fund in the 1987 Act and equals two percent of the aggregate outstanding insured obligations of the System

(less until the secure base amount is reached, which is estimated to occur in the mid 1990's.)

BACKGROUND

GOVERNMENT SPONSORED ENTERPRISES

Government sponsored enterprises (GSE's) currently hold more than a trillion dollars in obligations. Large losses within the savings and loan industry have raised concerns about the government's exposure should any of these enterprises fail. The near bankruptcy of the Federal Deposit Insurance Corporation has heightened public fears about the role taxpayers will play in paying for the failures of other financial enterprises. Fortunately, according to the Department of Treasury, the General Accounting Office (GAO), and the Congressional Budget Office (CBO), the current GSE's do not now pose any significant risks of losses to the U.S. Treasury.

The typical GSE is a privately owned, federally chartered, financial institution that has nationwide operations and specialized lending powers. GSE's benefit from an implicit federal guarantee that enhances their ability to borrow capital. Congress created government-sponsored enterprises to help make credit reliably available to farmers, homeowners, colleges and students.

GAO reported that ties between the GSE's and the government have weakened private market discipline because creditors believe the federal government will likely assist GSE's through any financial difficulty. While the government has no legal obligation to protect GSE creditors, it seems clear that the GSE—federal government nexus indeed causes creditors to behave like insured depositors who believe their investments are safe.

Like any private financial firm, these enterprises are subject to financial risks. These risks include losses arising from borrowers' default, adverse changes in interest rates, poor management decisions and unfavorable business conditions.

It is widely believed that the federal government could not tolerate a default by any GSE because it would reduce the market value of all GSE obligations, perhaps significantly, and could endanger the stability of the entire financial system. This demonstrates the need for Congress to act now, while there is little risk, to avoid the need to a respond to a crisis at a later date.

The table below shows the outstanding debt of GSE's:

GSE's (1990):	*Billions*
Federal National Mortgage Association	$432.2
Federal Home Loan Mortgage Corporation	344.8
Federal Home Loan Bank System	117.9
Farm Credit System	56.1
Student Loan Marketing Association	39.0

FARM CREDIT SYSTEM

The Farm Credit System (FCS) is a GSE established as a nationwide system of lending institutions and affiliated service and other entities. Through its banks and associations, the FCS provides credit and related services to farmers, ranchers, producers and harvesters of aquatic products, rural homeowners, certain farm-related businesses, agricultural and aquatic cooperatives and rural utilities. FCS institutions are federally chartered under the Farm Credit Act and are subject to regulation by an independent federal agency, the Farm Credit Administration (FCA). The banks and associations are not commonly owned or controlled. They are cooperatively owned by their respective borrowers.

Unlike commercial banks and other financial institutions that lend to the agricultural sector in addition to other sectors of the economy, under the Farm Credit Act, FCS institutions are restricted solely to making loans to qualified borrowers in the agricultural sector and to certain related businesses. Moreover, the FCS is required to make credit and other services available in all areas of the nation. In order to fulfill its broad statutory mandate, the FCS maintains lending units in all 50 states and the Commonwealth of Puerto Rico.

The nation is divided into 12 Farm Credit districts, 11 of which are served by a Farm Credit Bank. In the remaining district, the Federal Land Bank of Jackson is in receivership. This district is served by the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas, which acquired the right to make long-term real estate loans in the district. The FCBs and the FICB of Jackson generally serve the district by making loans to or through their related associations. In addition, the districts are served by the National Bank for Cooperatives (CoBank) and two other Banks for Cooperatives, each of which has nationwide lending authority as well as the authority to finance specified international agricultural transactions. The banks maintain service entities to provide a variety of services to FCS institutions and their borrowers.

The FCS obtains funds for its lending operations primarily from the sale of systemwide debt securities. These debt securities are the joint and several obligation of each of the banks. Each bank is liable for the debts of the other banks. Systemwide debt securities are not obligations of, nor are they guaranteed by, the United States or any agency or instrumentality thereof, other than the FCS banks.

Net proceeds from the sales of systemwide debt securities are used by the banks to fund their loan portfolios, to meet maturing debt obligations and for other general corporate purposes. Each bank determines its participation in each issue of systemwide debt securities based on its funding and operating requirements, subject to the availability of eligible collateral, to determinations by the Federal Farm Credit Banks Funding Corporation as to conditions of participation and terms of each issuance, and to FCA approval. The collateral requirement does not provide holders of systemwide debt securities with a security interest in any assets of the banks.

FARM FINANCIAL SITUATION AND FCS CONDITION

The farm sector in the aggregate has shown relatively strong financial performance in the last four years. Higher net farm incomes have coincided with recovery in the balance sheets of FCS institutions. The balance sheet gains reflect both a growth in asset values and a reduction in debt levels. Net farm income in 1990 is estimated at $49 billion in current dollars. Much of the increase in income since 1988 was in the form of noncash accumulations of crop and livestock inventories. By drawing down and then rebuilding these inventories, farmers have held their net cash farm income in a relatively high and stable range, $55–58 billion, over the past four years.

Forecasts for 1991 are less optimistic showing a decline in net farm income and an expectation that the decline will continue through 1992. Such forecasts take into consideration recent decreases in prices of selected farm commodities, predicted declines in the 1991 levels of farm exports and the lower level of federal government payments to farmers compared with the levels reached in 1990.

In 1990, the Farm Credit System institutions registered their first dollar and market share gains since 1982. Eight years ago, FCS lenders' outstanding loans to farmers and ranchers reached over $69 billion, or about 34 percent of all debt owed by these producers. The latest available data shows, FCS lenders' outstanding agricultural loans stood at $36.9 billion. This is just 26 percent of all agricultural debt. By way of comparison, over these same eight years, the commercial banks experienced a small initial dip in volume, but a steady rise in market share, from 22 to 34 percent. Commercial bank year end 1990 outstanding loans to the farm sector totaled $50 billion.

Legislative History

HISTORY OF THE FARM CREDIT SYSTEM

The current Farm Credit System was established in three stages between 1916–1933 to meet the unique credit needs of agricultural producers, and to address the financial problems they faced during the deteriorating agricultural economic conditions of the 1920's and 1930's.

The Federal Farm Loan Act of 1916 provided for the establishment of one Federal Land Bank (FLB) in each of 12 farm credit districts in the United States to make long-term mortgage loans through local associations in which the borrowers became members and stockholders. These banks were created because sufficient credit for real estate purchases was not available on affordable terms.

The Agricultural Credit Act of 1923 added a Federal Intermediate Credit Bank (FICB) in each district to provide funds to commercial banks and other agricultural lenders for short-term operating loans. These banks were created because commercial banks were unable to meet farmer's production credit needs during the agricultural depression of the 1920's.

Responding to the financing difficulties which farmer cooperatives had faced in the 1920's, the Farm Credit Act of 1933 provided for the third component of the FCS, the Banks for Cooperatives (BC's). These were chartered to make loans to farmer marketing, purchasing, and business service cooperatives.

The Farm Credit Act of 1933 also established local Production Credit Associations (PCAs) to make short-term and intermediate-term production loans to farmers. Congress created these associations to channel funds directly to producers from each Federal Intermediate Credit Bank because private lenders were unable to meet the credit needs of many farmers during the Great Depression.

The three acts establishing the Farm Credit System were recodified into the Farm Credit Act of 1971, and minor amendments were made in 1980. The 1971 Act, as amended, authorizes all the activities of the Farm Credit System.

FARM CREDIT SYSTEM: RECENT LEGISLATION

A severe downturn in the agricultural economy beginning in the early 1980's contributed to a financial crisis among many agricultural lenders and their farmer borrowers. Since the cooperatively owned and operated Farm Credit System lends almost exclusively to agriculture, it was faced with a large problem loan portfolio, much of which was gradually written off as uncollectible. These loans caused the FCS to experience operating losses of $2.7 billion in 1985 and $1.9 billion in 1986, seriously jeopardizing its financial viability.

Congress responded quickly. First in 1985, the Farm Credit Amendments Act of 1985 (P.L. 99-205) reorganized the Farm Credit Administration with the goal of making it an arm's length regulator of the FCS. It set up the current FCA Board structure and provided the agency increased regulatory powers. On the theory that the financially stronger elements of the system would assist the elements experiencing financial stress, it created a new institution, the Farm Credit System Capital Corporation. The Capital Corporation was given the power to assess healthy FCS institutions for purposes of aiding weaker institutions. It also authorized Federal funds to assist the FCS should its self-help resources be exhausted.

This Federal assistance, however, was only to be given at the discretion of the Department of Treasury if certified as necessary by the FCA. Any Federal assistance was subject to Congressional appropriations in advance.

The continuing deterioration in the system's financial condition, pressures to reduce the FCS's interest rates on former loans to more competitive levels, and litigation to block the self-help provisions adopted in 1985 led to changes in the 1985 legislation less than one year later. In October 1986, The Farm Credit Act Amendments of 1986 (P.L. 99-509) were enacted.

The 1986 Act (1) repealed the preexisting power of the Farm Credit Administration to approve loan interest rates set by each FCS bank; (2) established as Congressional policy that agriculture's credit needs are best served if FCS lenders offer equitable and competitive rates; and (3) allowed each system institution to reduce its borrowing costs by deferring and accounting for excess debt costs and specified losses for a period of up to 20 years. These regulatory accounting practices (RAP), subject to FCA approval, were intended to enable units of the FCS that had no remaining surplus capital to deal with their operating losses (without necessarily threatening borrower-owned stock). This allowed FLB's with impaired borrower stock to continue paying off their stock at par value, but then booking these losses over time. Banks using RAP were thus permitted to continue to operate and were given breathing space to develop a more permanent solution to their financial problems.

The Agricultural Credit Act of 1987, enacted on January 6, 1988, authorized a $4 billion financial assistance package for financially vulnerable FCS institutions. Among the other provisions, it mandated FCS organization changes, protected the stock invested by borrowers in FCS institutions, and specified the requirements for restructuring FCS problem farm loans.

In addition, the law authorized a secondary market for agricultural real estate loans. Commercial banks and life insurance companies have long contended that the secondary market would provide a more competitive and stable source of real estate credit to the agricultural sector.

DESCRIPTION OF THE FARM CREDIT SYSTEM

With about $51 billion of net loans outstanding as of June 30, 1991, the Farm Credit System remains a significant provider of credit to farmers, ranchers, and their cooperatives.

The FCS is comprised of 11 farm credit banks, one intermediate credit bank, three banks for cooperatives and 262 local associations which deliver credit to farmers and ranchers. Each of these banks is a separate corporate entity tied to the other banks by the issuance of consolidated notes and bonds that are the joint and several liability of all 15 banks. These notes and bonds are issued in the national financial markets to raise the capital to lend to qualified borrowers.

Each bank is owned by the associations, or cooperatives within the district. The Farm Credit System is distinguished by its cooperative structure in which stockholders have a voice in the governance of the FCS. The principal objective of the FCS is to provide qualifying farmers and cooperatives with credit at the least cost.

Although FCS entities are not Government owned or controlled, the FCS is a "government-sponsored enterprise." This status affords it a preferred place in the money markets, even though the FCS's bonds and other debt instruments are not guaranteed by the Federal Government.

The institutions in the FCS are governed by boards of directors elected by the FCS's stockholders. Currently, to borrow from the FCS, a farmer must acquire stock equal to two percent of the loan or $1,000 whichever is less.

The Federal land bank associations originate loans to producers and farm related businesses. The loans range in duration from 5 to 40 years for land and other capital purchases. These loans are usually secured by a first lien on real estate. Producers and farm-related businesses obtain short and intermediate-term credit from production credit associations. Funds for these loans are borrowed from the Farm Credit Banks. PCA loans cover seasonal operating expenses, improvements, farm equipment costs, livestock, storage facilities, and buildings. In some districts land bank associations and production credit associations have merged to form agricultural credit associations (ACA's).

The banks for cooperatives provide a complete line of credit services to agricultural and rural utility cooperatives. The BC's may also provide financing for international trade transactions for cooperative sourced products.

The FCS is regulated by the Farm Credit Administration (FCA), an independent agency of the Federal Government with powers similar to other Federal financial regulators. The FCA is governed by a full-time three person Board. Each member of the FCA Board is appointed by the President and confirmed by the Senate.

COMMITTEE CONSIDERATION

HEARINGS

On May 21, 1991, at 2:40 p.m. the Committee on Agriculture, Nutrition, and Forestry met to discuss government sponsored enterprises.

The first witness was the Honorable Robert R. Glauber, Under Secretary of the Treasury for Finance, United States Department of Treasury.

Mr. Glauber opened his testimony by explaining the requirements of the Treasury Department under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the Omnibus Budget Reconciliation Act of 1990 to assess the financial safety and soundness of all government sponsored enterprises (GSE's). The failure of federally insured thrift institutions during the 1980's and the huge amount of federal funding involved prompted the examination of the risks posed to the federal government by GSE's.

Mr. Glauber explained that the department's 1991 study included an objective analysis and assessment of the financial soundness of the GSE's as well as their existing regulatory structure. It also included the Department's recommendations for change.

Mr. Glauber stated that the financial insolvency of even one of the five major GSE's could strain U.S. and international financial systems and result in a taxpayer-funded rescue. He added that although no GSE posed an immediate threat, to wait to take action until financial disaster has already taken place, would prove costly and difficult.

Mr. Glauber concluded that because of the government sponsored enterprises' public policy purposes, their ties to the Federal Government, the importance of their activities to the U.S. economy, their growing size, and the rescue of the Farm Credit System in the 1980's, investors often ignored the usual credit fundamentals of the GSE's and looked to the Federal Government to guarantee GSE obligations.

Mr. Glauber testified that enhanced Government regulation would restrain GSE's, reducing the risk of mismanagement and the potential negative effects on the U.S. economy. He then outlined that effective safety and soundness regulation should contain the following four principles:

(1) financial safety and soundness regulation of GSE's must be given primacy over other public policy goals;

(2) the regulator must have sufficient stature to avoid capture by the GSE's or special interests;

(3) private market risk mechanisms should be used to help the regulator assess the financial safety and soundness of GSE's; and

(4) the basic statutory authorities for safety and soundness regulation must be tailored to recognize the unique nature of each GSE.

The Department's analysis of the existing regulatory structure of the GSE's found that there were some deficiencies. Mr. Glauber stated, however, that the Farm Credit Administration already possessed the regulatory powers and the stature to be a competent safety and soundness regulator.

His concerns about the system stem from a risk analysis that rated the FCS's bonds, without the implicit guarantee of the federal government, below investment grade—the lowest rating received by a GSE. He then recommended three changes to create a more financially sound Farm Credit System:

(1) granting FCA additional authority over Farmer Mac, including general rule-making authority;

(2) granting the Insurance Corporation access to association capital in order to create an incentive for financial discipline;

(3) clarifying the authority of the Federal Farm Credit Bank Funding Corporation to allow them to obtain information from system banks and associations to monitor their financial performance standards, as well as institute economic incentives designed to encourage compliance with these standards.

Mr. Glauber concluded that the size of the GSE's and the concentration of potential risk in so few institutions entitled the taxpayer to expect Congress and the Administration to focus on more effective oversight of these institutions.

The outlined four principles for safety and soundness regulation were to be the basis for the administration's proposed legislation.

The second witness was Mr. Harry S. Havens, Assistant Comptroller General of the United States General Accounting Office (GAO).

Mr. Havens reported that GAO had focused on the question of how best to balance the stockholder's interests with the government's twin objectives of achieving program purposes and minimizing the risk to the taxpayer.

Mr. Havens explained that GAO had examined the regulation of the GSE's as a group, rather than each individual GSE and its current regulator framework. GAO concluded that the establishment of an independent Federal enterprise regulatory board could sufficiently oversee the GSE's and protect the government's interest.

Mr. Havens also recommended that this board be given clear authority to establish safety and soundness rules for all the GSE's, including risk-based capital rules to monitor compliance with those rules and to take appropriate enforcement action similar to those of a bank regulator, in the event of noncompliance.

Mr. Havens recognized that the Farm Credit System was unlike the other GSE's. It is a network of borrower-owned lending institutions who make loans directly to the borrower and has its own regulator, the Farm Credit Administration, which has most of the authority needed to be an effective safety and soundness regulator.

Mr. Havens asserted that the FCS should be regulated by the same board as the other GSE's but he would move FCA staff to this board to bring the expertise needed to be an effective regulator.

Mr. Havens believed that the combination of the FCA and the new board would result in increased independence and prominence of the system's regulator, and might produce some operational efficiencies.

Mr. Havens asserted that by keeping the relationship between regulator and regulated at arms length and broadening the regulator's responsibilities to several GSE's, the regulator's possible temptation to micromanage the regulated entity would be reduced as well as the potential for the entity to capture the regulator. The broader responsibilities and increased stature would also assure ready access to policy makers in the executive and legislative branches.

In conclusion, Mr. Havens turned his attention to Farmer Mac which he determined should be subject to essentially the same regulatory framework as Freddie Mac and Fannie Mae in order to assure a consistent regulatory framework.

The third witness was Mr. Robert Seiler, Jr., analyst for the Congressional Budget Office (CBO).

Mr. Seiler focused his testimony on three points made by the CBO in their report on GSE's and on the policy options for the Farm Credit System. His points were that:

(1) the institutional changes established under the 1987 Agricultural Credit Act will significantly reduce the risks that the Farm Credit System poses to the government;

(2) despite the implementation to date of many of these institutional changes and the improved financial condition of the system as a whole, both the agricultural sector and some portions of the FCS remain in somewhat weak financial condition; and

(3) CBO agreed with Treasury and GAO that current federal supervision of the Farm Credit System is generally adequate to assure the safety and soundness of its member institutions. The one problematic area identified was the ambiguity that surrounds some of FCA's authority over Farmer Mac.

He added that the financial condition of the FCS raises questions about the adequacy of the Farm Credit System's capital, the federal Government's ability to assure the safety and soundness of the FCS, and ultimately whether or not the Government is exposed to risk of further losses in the future

Mr. Seiler explained that if losses do develop, each institution's loan loss reserves and capital will serve as the first line of defense, then the banks will seek assistance from the insurance fund, and then if both of these internal resources are insufficient, the district banks are jointly and severally liable for all the FCS's obligations.

Mr. Seiler stated that because neither FCA's new capital standards nor the insurance fund will be fully operational until 1993, the financial integrity of the FCS could be threatened by a major downturn in the farm economy over the next few years. Mr. Seiler outlined the three policy options that could affect the risk that the Farm Credit System poses to the government. The policy options were to:

(1) eliminate of joint and several liability, under which all the banks share the liability for the bonds issued by any district or bank for cooperatives;

(2) consolidate or eliminate the existing district banks; and

(3) authorize the Insurance Corporation to change the target size and the rate of growth of the insurance fund, or to alter the current insurance premiums.

CBO reasoned that eliminating joint and several liability would benefit the FCS by tieing borrowing costs more closely to risk and encouraging sounder business practices. These changes would reduce the Government's exposure to risk. CBO also acknowledged several drawbacks. First, the perceived risk could increase because newly issued bonds would no longer be backed by the geographic diversification of the FCS. Second, investors might infer a reduced federal commitment to the individual districts of a fragmented system. Finally, the liquidity of the FCS's debt might decrease. All three factors could increase borrowing costs.

CBO found that consolidation would probably reduce the FCS's operating costs, but the restructuring could also undermine local control of the FCS. Other problems with this option included reluctance of district members to risk a change in their operating procedures and the lack of an acceptable means of dealing with the districts banks' non-accruing assets.

Authorizing changes in the insurance fund would better protect the government against loss in the period of heightened vulnerability that the FCS faces in the next few years. A larger insurance fund would allow for recapitalization and also help those districts that may have difficulty repaying the Financial Assistance Corporation debt beginning in the year 2003. Adjusted premiums might provide institutions with better incentives to manage the risks of lending as well. However, if the fund target size were increased or the premium levels were hiked, the financial condition of the more vulnerable portions of the FCS might be imperiled and borrowers served by institutions could face increased costs.

In regards to GAO's testimony, Mr. Seiler stated that a centralized supervisor with the kind of structure that GAO outlined would have greater responsibility and visibility, and the risk of capture by the regulated would be lessened. However, Mr. Seiler stated that objections could be raised to applying this to the Farm Credit System. According to his analysis, the Government is exposed to significant risk with respect to the FCS because it is a single sector lender, recovering from the substantial losses suffered in the 1980's and because the institutional changes begun in 1987 have not been fully implemented. Also, a new agency probably could not achieve very large economies by monitoring and examining the banks and associations in the System.

In conclusion Mr. Seiler reiterated that the institutional changes and improvement in the farm economy have significantly reduced the Government's risk exposure from the FCS, but that portions of the FCS remain in weak financial condition. If there was a serious downturn in the farm economy, the safety and soundness of the entire system could be threatened.

The fourth witness was Mr. Harold B. Steele, Chairman and Chief Executive Officer of the Farm Credit Administration.

Mr. Steele stated that he concurred with the assessments by Treasury, CBO and GAO, that despite improvements, full recovery of some FCS institutions has yet to be attained. Those same institutions and the risky nature of the single industry credit delivery system continues to represent problems. The FCA, however, believed that the mechanisms and resources needed to preclude any additional risk of loss to the taxpayers were already in place and merely needed to be strengthened.

Mr. Steele presented four legislative recommendations directed at furthering the goals of the 1987 Farm Credit Act and enhancing protection for the taxpayers and the investors. He recommended:

(1) enhancing the permanence of capital and promoting its accumulation at the point of primary risk—the association level;

(2) strengthening the Farm Credit System Insurance Corporation authorities so that all FCS capital is available before taxpayer exposure to FCS losses;

(3) achieving a more streamlined, cost efficient FCS structure; and

(4) assuring that obligations to repay financial assistance previously provided through the Farm Credit System Financial Assistance Corporation can be paid in time.

Mr. Steele emphasized that FCA's recommendations address a set of complex issues and that consideration of them independent of one another could result in an adverse impact on FCS safety and soundness. It is FCA's strong belief that adequately capitalized and soundly managed primary lenders are not only the taxpayer's primary protection, but also the best hope for the long-term health of the system and for a consistent source of reasonably priced credit for America's farmers and ranchers.

Mr. Steele stated that the FCA's proposals would further enhance local control and one stop shopping for the farmer borrowers, as well as help ensure that the past mistakes of the FCS are not repeated, to prevent undue burden on the next generation of farmers and ranchers.

The fifth witness was Mr. C.T. Frederickson, President and Chief Executive Officer of the Farm Credit Bank of St. Louis, and Chairman of the Board at Federal Farm Credit Banks Funding Corporation.

Mr. Frederickson opened his testimony by recognizing the financial progress that had been made in the FCS. Most importantly, the FCS was solidly profitable from operations in 1990 showing an increase of $232 million in earnings from 1989 to 1990. As a result of those earnings, and an additional $211 million from the first quarter of this year, capital is being restored.

Mr. Frederickson discussed the changes that have been made in the level of risk assets, particularly high risk loans, nonaccrual loans and their repayment behavior. First, the FCS had helped farmers in distress by restructuring about $11 billion in loans involving some 81,000 borrowers. Second, financial assistance had been invested in four of the farm credit banks. Finally, the insurance fund had been established. Its present rate of accumulation will put the fund at the statutorily established secure rate base amount some time in the mid-1990's.

Mr. Frederickson then referred to two overriding themes in the GSE's reports: (1) strong, independent, dependable governmental regulation is required for GSE's and (2) risk to the taxpayer, to the Government should be reduced through the combination of stronger capital positions for the GSE's generally and improvements in certain of the management practices of GSE's.

Mr. Frederickson stated that he was in favor of the Farm Credit Administration remaining the regulator of the Farm Credit System and that the restructuring of FCA from the 1985 and 1987 Acts fulfills the requirement for strong and independent regulation. Mr. Frederickson stated that he concurred with Mr. Steele in that he believed no additional authority is required.

Mr. Frederickson stated that although progress can be seen in the financial trends, the risk levels in the loan portfolios of many Farm Credit System institutions are well above generally accepted industry standards and will require additional attention.

In explaining why this was the case, Mr. Frederickson pointed out that for major financial recovery by a group of financial institutions to occur, four years was not sufficient time. He also stated that the risk levels in the loan portfolios, were going to remain substantially higher than industry levels, due to the fact that they are long-term loans and for them to improve requires the return to full financial health, which in the case of many farmers is a very slow process.

Mr. Frederickson testified on the improvements in bank and association operations from the internal standpoint. He stated that significant improvements had been achieved in credit management, internal controls, asset-liability management, business planning, among others, and the basic business throughout the FCS.

Mr. Frederickson shared three internal actions that helped in these improvements in particular: (1) structurally the FCS has consolidated itself—today there are 262 associations compared to 1,000 in 1984 and negotiations are taking place among a number of the banks for further consolidation; (2) the FCS is developing an interbank agreement or contract among the 15 banks to abide by certain business performance standards at levels higher than the FCA would set (The FCS is using some of the same agencies that Treasury and others have used to help design the standards. Mr. Frederickson was optimistic that the agreement would be put in place and that it would be an important supplement to the Funding Corporation's market access and risk alert program); and (3) several banks have begun setting aside financial resources to meet the financial assistance repayment requirements for FAC debt.

Mr. Frederickson concluded that what was needed was the mutual assurance internally that everyone, all institutions, all districts, were, in fact, following this same practice. Mr. Frederickson agreed that legislative clarification for repayment was needed, primarily for the purpose of determining which banks are obligated to repay the debts. He testified that once this was done, an agreement could be reached internally to make sure that the financial resources in the cooperative meet all of the financial system's repayment requirements within the 15-year period established and was concerned about the move for the drastic legislation such as that the FCA proposes.

Mr. Frederickson then mentioned that publicized talk of insolvency, technical or otherwise, made him nervous. Farm Credit Banks operate on a fairly thin margin. Fear in the marketplace, where funds are purchased, could do a great deal of damage.

In concluding his testimony, Mr. Frederickson gave his evaluation of the FCA recommendations. He suggested that perhaps the FCA had gone beyond their basic primary responsibility of dealing with safety and soundness issues. He suggested that stockholders can not be expected to sacrifice the use of their money and put it at risk in the form of capital in FCS institutions.

The final witness was Mr. Henry D. Edelman, President and Chief Executive Officer of the Federal Agricultural Mortgage Corporation.

Mr. Edelman commented on the remarkable amount of progress that Farmer Mac has experienced in the past year. He used Farmer Mac II as an example of this progress as well as other programs aimed at dramatically reducing the cost of funding to lenders without increasing the risk to the Government.

Mr. Edelman spoke of signs of increasing interest in the Farmer Mac program by poolers and lenders and he anticipated growing business volume over the next few months. He then used the recent passing of legislation in Vermont allowing the State's Industrial Development Agency to sell Farmers Home Administration guaranteed farmer loans to Farmer Mac II as an example of this growing interest.

Mr. Edelman stated that this interest demonstrates the importance of Farmer Mac as a secondary market, the Farmer Mac II program, and Farmer Mac's willingness to create new opportunities in the secondary markets through Farmer Mac. He said it also demonstrates, the importance of flexibility in Farmer Mac's program.

Mr. Edelman introduced four main points important to GSE issues. He was concerned by:

(1) the troubling range of perceptions by government evaluators—some failing to recognize Farmer Mac as a secondary market entity;

(2) the fact that some of the reports pertaining to GSE's seem to set a double standard for the regulation of Farmer Mac versus the other secondary market entities (They recommend more extensive authority, such as full bank regulatory authority provided by FCA, yet this was not recommended for the other secondary markets);

(3) the fact that the reports correctly identify serious conflicts of interest that confront the regulator that had responsibility for both primary lenders and the secondary market that served the primary lender; and

(4) the reports' failure to acknowledge that Farmer Mac is already one of the most regulated of the GSE's.

Mr. Edelman stressed the importance of an objective regulator of Farmer Mac—one not hampered by significant conflicts of interest—and requested that a more objective evaluation of the current regulatory authority be made.

Although Farmer Mac had not adopted a formal recommendation for action, Mr. Edelman stated that the authority to regulate

Farmer Mac could be shifted to the United States Department of Agriculture. This approach would be comparable with HUD's authority over Fannie Mae and Freddie Mac. He also stated that it would provide the kind of objectivity that has been contemplated for Farmer Mac and which would ensure their continuing service to their markets. He stated that an alternative would be an independent office within the FCA which would be fully insulated from potential conflicts of interest.

Mr. Edelman, however, noted that there was still the potential for a conflict of interest with an independent office. The more cautious route for Congress to take, would be to find a way of insulating Farmer Mac from those potentials.

MARKUP

The committee met in open session on September 12, 1991 to markup an original bill entitled the "Farm Credit System Financial Safety and Soundness Act of 1991." Chairman Leahy offered a motion to favorably report the bill to the Senate. The motion was agreed to by the committee by voice vote.

Statement of Purpose

Under the Omnibus Budget Reconciliation Act of 1990 (OBRA), the Committee on Agriculture, Nutrition and Forestry was directed to report legislation that addressed the issue of protecting the taxpayers from any potential exposure posed by the government sponsored enterprises (GSE's) under the Committee's jurisdiction. These are the Farm Credit Banks, the Banks for Cooperatives of the Farm Credit System and the Federal Agricultural Mortgage Corporation (Farmer Mac).

Congress is undertaking the task of evaluating all GSE risk. The increased scrutiny of the government-sponsored enterprises stems from the realization of the extent and amount of the liability incurred for the savings and loan bailout. Over the next 30 years the losses from failures in the savings and loan system will cost taxpayers up to $500 billion.

GSE's are financial institutions chartered by Congress to achieve public purposes. The bonds and financial securities they issue are implicitly backed by the Federal government. It is assumed by investors that Congress and thus the taxpayers, will "bail-out" any GSE that is about to fail. This implicit guarantee allows GSE's to raise funds at nearly the same cost that it costs the government, itself, to raise funds, which is much lower than the cost to most private companies.

The sheer size of all these GSE enterprises—almost $1 trillion in exposure—compels Congress to act before problems arise. The Committee strongly believes the federal government cannot afford another financial bailout. The Committee agrees that the only reasonable protection, other than abolishing the GSE's altogether and disregarding the public purposes they serve, is to take precautions and make adjustments to prevent financial problems. At the very least, Congress should provide safeguards in the event that a financial crisis does occur, so that taxpayer dollars will not be needed.

This issue was first raised when Congress passed the savings and loan bailout legislation. Under FIRREA (Federal Institutions Reform, Recovery, and Enforcement Act of 1989), the Department of Treasury and the General Accounting Office (GAO) were required to look at the risk exposure that GSE's pose to the Federal government and report to Congress. Both agencies released reports in May of 1990. Treasury analyzed the current status and types of risk, then made recommendations—the most significant was that of creating a new agency to regulate all GSE's, a so-called super-regulator. GAO did not make any recommendations but did a thorough analysis of the financial health of each enterprise.

Under OBRA, Treasury, GAO and the Congressional Budget Office (CBO) were directed to formulate policy options on improvements to the safety and soundness of the GSE's. Treasury was also required to present a legislative proposal to Congress by April 30, 1991.

When Congress received the Treasury proposal, it did not include the earlier proposal establishing a super-regulator but instead advocated for building on the regulatory structures that were already in place. For the Farm Credit System (FCS), the Treasury recommendations focused on the ability of the FCS to manage its risk and to pay back the financial assistance provided in 1987. Treasury also proposed increased FCA authority over Farmer Mac and the implementation of a forced consolidation plan if the system failed to agree to its own.

GAO analyzed many of the inherent risks of the GSE's and proposed a super-regulator arrangement, asserting that this structure would provide higher prominence as a government agency and cost savings through economies of scale. GAO has acknowledged that most of their study focused on the larger GSE's and not on the Farm Credit System as it is one of the smaller GSE's with a regulatory structure already in place.

CBO, noting that the Farm Credit System's financial condition and overall credit risk have improved substantially since the government provided assistance in 1987, stated that the system remains vulnerable and continues to expose the government to more risk than any other GSE. CBO's analysis also included a succinct statement on the uniqueness of the FCS. CBO notes that:

(1) most FCS institutions make loans to individual borrowers while other GSE's serve financial institutions;

(2) FCS is the only GSE that is supervised by an agency with powers equivalent to those of the bank regulatory agencies, is subject to minimum risk-based capital standards, and is financing a federal insurance fund; and

(3) FCS is much more dependent on the financial well-being of a single sector of the economy—agriculture—than the other GSE's.

CBO offered three broad policy options: (1) eliminating joint and several liability of the banks; (2) consolidating district banks; and (3) expanding insurance corporation's authority. CBO also acknowledged that while each of these options could affect the risk posed to the government each might also compromise the financial viability of the FCS.

The reports all stated that there is little immediate risk of problems with GSE's—still the Farm Credit System is the weakest GSE.

The outstanding loans at the Farm Credit System institutions represent only a small portion of the almost $1 trillion total exposure—for all GSE's. The FCS has outstanding approximately $55.2 billion in guarantees and securities. That is less than seven percent of the nearly $800 billion of outstanding obligations held by Fannie Mae and Freddie Mac.

Nevertheless, it is the responsibility of this Committee to ensure that the mission of the FCS is carried out while protecting the taxpayers' interest. The Committee agrees that reforms for GSE's are necessary but it also recognizes that not all GSE's are the same. Agricultural lending is unique in many respects. The Committee believed that the distinctions raised in the CBO report of the Farm Credit System were valid distinctions and wished to ensure that the efforts made in the 1987 Agricultural Credit Act were not unnecessarily undone.

In 1987, the Agriculture Committee restored the Farm Credit System to financial stability without burdening taxpayers. In a recent report to the Administrative Conference of the United States, the farm credit reforms of 1987 are given as the one example where Congress showed it learned the awful lessons of the S&L regulatory failures.

The report pointed to strengthened FCA regulatory authorities—to issue cease and desist orders, to remove FCS officers, to impose civil money penalties, and to appoint conservators.

Part of the 1987 reform legislation created the Farm Credit System Financial Assistance Corporation and granted it the authority to issue up to $4 billion worth of bonds to assist troubled FCS institutions. To date, the Financial Assistance Corporation (FAC) has provided FCS institutions with $1.3 billion in assistance.

The legislation created an insurance fund—likened to the Bank Depository Insurance Funds for commercial banks—as an added safeguard. Premiums are being collected from FCS institutions by the FCS Insurance Corporation to protect against future problems. Four hundred thirty eight million dollars are in the fund at present. The Insurance Fund is expected to be fully funded sometime in the mid 1990's (at 2 percent of all outstanding insured liabilities or some higher amount as determined necessary by the Insurance Board).

Individual institutions are building up internal capital reserves to protect their own safety and soundness. Under regulations promulgated under the 1987 Act, the FCA established a minimum capital level of 7 percent of each institution's risk weighted assets. Each system institution is now subject to minimum risk based capital standards to protect them in the future before assistance would be sought from the insurance fund.

The latest financial reports on the Farm Credit System show that through the utilization of the provisions provided in the 1987 Agricultural Credit Act, the FCS is regaining financial stability.

This Committee knows that there are special risks inherent in agricultural lending. The Act in 1987 gave the FCA and the Farm Credit System the tools to better manage that risk. The Committee must act under the provisions of OBRA. However, more importantly, the Committee has a continuing interest in insuring the safety and soundness of the institutions established to provide credit to U.S. farmers and ranchers. The Committee is committed to its oversight role to ensure that the FCS continues to provide credit to farmers and to protect the taxpayers from having to pay for any future financial problem in the Farm Credit System.

TITLE I

The GSE report to Congress by the Department of Treasury, indicated that the FCS banks and associations lack consistent standards for managing the risks that they confront, and proposed a statutory mechanism to ensure that the FCS institutions establish uniform financial conditions and performance standards and require compliance with such standards by FCS institutions. This effort should encourage greater self-discipline by FCS institutions and would reduce the risk of default in payment of Farm Credit obligations, thereby reducing the risk to the Government.

Currently the Federal Farm Credit Banks Funding Corporation, under the Farm Credit Act, acting for the Banks and subject to FCA approval, is responsible for establishing conditions of participation in issuances of systemwide debt securities. The Funding Corporation has instituted the Market Access and Risk Alert Program (MARAP). Under MARAP, the Funding Corporation monitors and evaluates on a regular basis whether an individual bank's participation in the issuance of systemwide debt securities should be restricted. The ultimate sanction available to the Funding Corporation under MARAP is the complete denial, subject to FCA approval, of the Bank's ability to participate in such issuances. MARAP is designed to offer a measure of protection to all the Banks, which are jointly and severally liable on Systemwide Debt Securities, by identifying and addressing individual Bank problems in order to avoid or minimize losses to the remaining Banks related to their joint and several liability obligations.

Title I contains a provision structured to encourage the signing of a voluntary interbank agreement. The agreement is designed to carry out the intent of the Treasury proposal in terms of risk management, but to rely on the expertise of the FCS for its precise design. All banks would have final approval of the agreement which must include enforcement mechanisms. The Committee was very concerned that such agreement not undercut the mission and purpose of the Farm Credit System, but instead impose sound management practices into the current lending objectives. These standards would be in addition to the Farm Credit Administration (FCA) minimum regulatory requirements and none of the provisions in the agreement would interfere with the regulation of the FCS by the FCA.

The bill also provides that if on the 180th day after enactment an interbank agreement has not been signed, then the Funding Corporation would use its statutory authority to determine the conditions of the banks' participation in joint, consolidated, or Systemwide obligations to: (1) develop uniform financial condition and performance standards for the FCS institutions; (2) monitor institution compliance with the standards; and (3) impose "economic incentives" to encourage compliance by the banks.

The proposed economic incentives could include: (1) differential pricing of joint, consolidated, or System-wide obligations to the individual banks by the Corporation; (2) premiums imposed by the Corporation on banks that fail to meet established financial condition and performance standards; or (3) such other economic incentives as may be determined appropriate by the board of directors of the Corporation.

There was concern that the Funding Corporation could use the proposed authority to impose economic sanctions on banks in a discriminatory fashion since all of the banks do not have direct representation on the Funding Corporation board of directors. Thus the bill provides for the expansion of the Board to include one representative from every bank should the Funding Corporation provision take effect.

The Treasury also proposed a statutory mechanism to require the associations that own a financially troubled bank which has received assistance from the Farm Credit Insurance Corporation, to subscribe additional capital in the bank. The Treasury report states that since the associations directly benefit from the assistance provided by the Insurance Corporation, they should be required to provide support to the bank in the form of additional capital. The Treasury proposal is also intended to create an incentive for the associations to impose more financial discipline on themselves, as well as their bank.

However, this proposal could establish a disincentive for the associations to build capital in excess of the amount needed to meets its own minimum capital standards. Another concern is that the required purchase of additional stock in a bank could result in further weakening the financial condition of a troubled association.

In the bill, the provision on access to association capital is designed to reduce the potential of a district bank failure while its related associations were holding substantial capital. The Committee notes that the Insurance Fund was established to protect the taxpayer and investor, and to be utilized as the primary source of fund before any further action would be taken by the federal government. This provision on association capital will act as a further cushion, or second layer of protection to the U.S. Treasury in the event of the financial collapse of a system bank.

In the bill, an association would not be required to purchase stock to the extent that this additional stock purchase would cause the capital of the association to fall below 120 percent of its minimum capital level established by the FCA.

This title also contains a provision which provides the banks, associations, and other recipients the ability to determine the allocation of capital retained at the bank, and gives the FCA discretion to define "new" sources of capital. This authority is designed to disallow the double counting of capital. The Committee expects that once an agreement is reached between a bank and association such capital shall only be counted by one institution for regulatory purposes.

Title I also makes improvements in the operation of the Farm Credit Administration. The Committee considered moving the FCA

Board to a part-time status, noting the continuous plague of vacancies. The Committee believed that one of the problems in attracting highly qualified candidates stemmed from the time commitment and required move to Washington, DC. The Committee decided not to change the structure of the Board at this time but included provisions establishing minimum qualifications for Board Members. The issues before the Board require a certain level of understanding of sophisticated financial dealings, therefore the bill requires that Board Members have a substantial financial or regulatory background. The bill also requires the hiring of a Chief Executive Officer to carry out the policies of the FCA Board. The CEO would be responsible for the day-to-day operation of the FCA. This individual would also be required to meet rigorous qualifications and have both financial and managerial abilities.

The bill also adds two additional Board Members to the Farm Credit System Insurance Corporation Board. The legislation would add the Vice Chairman of the FDIC and a Governor of the Federal Reserve with agricultural expertise. The proposal is intended to avoid the development of a situation similar to that involving the savings and loan insurance corporation. Some have argued that the Federal Home Loan Bank Board which also served as the board for the insurance corporation used the insurance funds to delay the need for more stringent regulatory action. The Committee believes that the addition of two Board Members to the Farm Credit System Insurance Corporation would ensure that the Insurance Corporation would deal with only safety, soundness, and the integrity of the insurance fund, and thus provide additional protection for the taxpayer.

The Committee also discussed the idea of completely separating the Insurance Board from the FCA Board. There was concern that the establishment of a completely separate board for the Insurance Corporation would result in establishing a separate bureaucracy that would perform duplicative examination and supervision of the Farm Credit banks and associations, and therefore, increase its costs of operation. The Committee is concerned that the cost of regulation to the FCS institutions exceeds $40 million a year. The Committee did not want to see this cost increased to the FCS, knowing that these costs are ultimately passed on to farmers. The Committee expects that the Insurance Corporation continue in its efforts to use FCA resources whenever practicable to decrease the cost to farmers.

For the same reasons as with FCA, the bill requires that the Insurance Corporation hire a Chief Executive Officer to manage the day-to-day operations of the corporation.

TITLE II

Title II of the bill begins with a consideration of insurance premiums. The current insurance premium structure is risk based and is determined by the amount of accruing and nonaccruing loans of a bank. The Committee, however, recognizes that there may be risks of payment from the Insurance Fund that are not reflected in the current method of premium calculation. Such risks could arise if a bank encourages certain activities that increases the risk of loss to the bank. Such risks could result from activities involving the pricing of current loans, managing interest rate risks, establishing security requirements, and managing its investments. This bill, therefore, requires the General Accounting Office (GAO) to report to Congress on possible improvements to the premium structure.

Second, the bill requires GAO to study the implications of allowing the Insurance Fund the authority to assess associations directly to ensure all FCS capital is available to prevent losses to investors. In this study the GAO is required to consider the effects of:

(1) direct assessments on associations, including interest rates to borrowers;

(2) requiring that banks pass along the cost of premiums to the associations;

(3) requiring owner associations to purchase stock in the district banks, if needed, to prevent the banks from having to return to the Insurance Corporation for assistance;

(4) the purchase of stock from funds of the associations; and

(5) authorizing the Insurance Corporation to assess associations could have on the association's incentives for building capital.

Third, the GAO is required to study the implications of allowing the Insurance Corporation to collect supplemental insurance premiums under certain circumstances.

Fourth, the GAO is required to report on the benefits to farmers and rancher borrowers of the consolidation of the district banks into fewer regional banks taking into consideration economies of scale, the cooperative nature of the system, the impact on bank and association relationships, and the impact on systemwide bond issuances.

Lastly, the bill requires that GAO study the FCS institutions' overhead expenses. The Committee, has been, and continues to be, concerned about the cost of administration within the Farm Credit System because the costs are ultimately paid by the farmer borrower. It is accepted that certain expenditures are necessary in order to ensure the safety and soundness of the system. The Committee wants to make sure that the expenses of FCS institutions and the Farm Credit Administration are reasonable and prudent. In this context, the term "institution" refers to banks, associations, the Funding Corporation, the FCS Insurance Corporation, the Federal Agricultural Mortgage Corporation, and other entities in the Farm Credit System.

In the 1970's and 1980's, officials of several institutions spent stockholder funds for new office buildings, furnishings, and equipment in less than prudent manner. These expenses detracted from the soundness of their institutions and contributed to the problems of the 1980's. Congress took strong action through the Agricultural Credit Act of 1987 to correct these problems. The Committee wishes to make certain that those earlier mistakes are not being repeated.

The Farm Credit Administration (FCA) is an Executive Branch regulator. The operating funds and the building fund for FCA are paid for by the FCS. This Committee is concerned that the FCA may be spending funds for operating and building expenses that are in excess of what other Executive branch regulators spend for similar operations. The bill thus requires a study to determine the potential cost savings to system borrowers that may occur if FCA and the FCS were required to comply with General Services Administration standards.

This Title also provides for the Farm Credit System Insurance Corporation to be the statutory successor to the Farm Credit System Assistance Board in the case of capital preservation agreements that certify certain banks as eligible to issue preferred stock to the Assistance Corporation. The Assistance Board will terminate on January 6, 1993. However, the banks obligations under the agreements will continue beyond that date.

TITLE III

In addressing pending issues regarding financial safety and soundness regulation of Farmer Mac, the Committee recognized that there are a number of unique characteristics present in the structure of Farmer Mac and in its regulatory structure. The focus of the Committee's inquiry was to examine these structures from the standpoint of the adequacy and effectiveness of the financial oversight, and then to respond in the bill to any weaknesses identified.

Farmer Mac is the most recently established of the GSE's. It was created under circumstances which focused considerable attention both by the Congress and the Administration on minimizing any risk of losses to the government from the operation of the program. Thus Farmer Mac is already constrained in its operation by specific statutory requirements designed to assure the financial integrity of its operations and effectively insulate the government from any risks inherent in such operations.

The program is governed by strict standards for credit underwriting, loan payment, security appraisal and pool diversification which were developed by Farmer Mac to meet specific statutory minimum requirements and then reviewed by Congress before becoming effective. Pooling functions under this program are to be carried out through certified facilities which thus assume many of the risks encountered in the formation and servicing of loan pools. The securities issued against the loan pools are subject to securities registration laws and public disclosure requirements. Further, every pool of qualified loans backing Farmer Mac guaranteed securities must be protected by a minimum cash reserve or subordinated class of securities equal to at least 10% of the value of the loans in the pool.

This last requirement is unique to Farmer Mac among all of the GSE's, and was specifically included in the 1987 Act at the urging of the Administration to assure that a substantial cushion of private sector equity would always stand between potential program losses and the obligation of the government to support the program.

Although not Farmer Mac capital in a technical sense, the reserve/subordinated securities will behave in the same manner as capital relative to any losses experienced with regard to a pool. To the extent that the payments on mortgages within any pool are inadequate to cover fully the payments due on the securities issued against the pool, the shortfall (loss) will be first absorbed by the reserve/subordinated securities up to the minimum 10% level retained against the pool.

Farmer Mac, and the government, remain protected against the pool losses until the reserve/subordinated securities are exhausted. The operation of this structure is comparable to Farmer Mac being required to maintain 10% capital against eachpool as a cushion to absorb losses, if any.

The cushioning effect of the reserve/subordinated security requirement is further amplified by the rigorous credit underwriting standards which must be met by qualified loans. These requirements include a minimum loan to value (LTV) ratio of 75%, and broad commodity and geographic diversification required within each pool of loans before Farmer Mac can place its guarantee on the pool securities. Further, every pool that is presented for guarantee will be evaluated with the assistance of a stress test to determine the expected losses under severe adverse economic circumstances. Farmer Mac will only guarantee securities backed by a pool if the potential losses experienced under the stress test scenario are fully captured within the 10% cushion. Thus, for Farmer Mac's financial condition to be affected adversely, a pool must experience losses in excess of 10%, on top of the loss of the equity in the individual loans (minimum 25%).

The GSE Report issued by the Department of the Treasury indicates that an appropriate capital standard must serve three functions. First, by putting shareholder capital at risk, it provides a GSE with incentives traditionally imposed by the market to manage risk carefully, thus providing taxpayer protection. Second, it helps ensure the long-term financial viability of GSE's so that their services remain available to their intended constituencies. Third, it serves as a monitoring device for changes in a GSE's financial condition.

The Committee determined there was no indication that the existing requirement for pool reserves/subordinated securities would not be adequate to assure the financial soundness of Farmer Mac even in an extended period of economic adversity. However, the issue of putting shareholder capital at risk, as would be the case with a more traditional capital requirement, could in the Committee's opinion be more directly addressed. Consistent with this approach, the bill establishes across-the-board capital requirements for Farmer Mac to hold a minimum amount of shareholder equity and retained earnings as capital against the assets of the business operation.

The Committee also considered and rejected the recommendation of the Department of the Treasury that FCA be given a broad grant of rulemaking authority over the Farmer Mac program. The Committee points out that FCA's authority over Farmer Mac under existing provisions of the 1987 Act includes the authority to examine Farmer Mac for safety and soundness and a wide range of enforcement powers including but not limited to, the issuance of cease and desist orders to prevent any unsafe or unsound practices, the removal of officers and directors under certain circumstances and civil penalties.

The Committee report for the 1987 Act (Senate Report 100-230, page 53) appropriately noted in this regard: "It is the Committee's intent that the role of the FCA, as the general regulator of the FCS, be limited under the title to the examination and audit of the operation of the Mortgage Corporation [Farmer Mac] and the use of supervisory powers, where necessary, to protect the safety and soundness of the entity." Consistent with the limited role provided to FCA, the Committee included in the Act various structural protections, including the 10% reserve or subordinated interest implementing the secondary market. Through this approach Farmer Mac was charged with the task of implementing the program and FCA with the responsibility to oversee that effort for safety and soundness.

The bill also responds to the concerns raised by GAO and CBO in their reports on the potential for conflict of interest when a regulatory agency is responsible for the regulation of both primary and secondary lenders. GAO holds that a regulator responsible for both the primary and secondary markets may end up attempting to regulate the market itself, rather than the market participants. CBO expressed similar concerns in the context of putting all of the GSE's under one regulator.

The Committee creates an independent office at FCA which would be responsible for the regulation of the Federal Agricultural Mortgage Corporation (Farmer Mac). The Office of Secondary Market Oversight, as this new office would be named, will consist of a director, to be hired by and serve at the pleasure of the FCA Board for one or more 5 year term, and other employees necessary to carry out the responsibilities of the office. The Committee expects that this office, to the maximum extent possible, will use the resources of the FCA to avoid duplicative efforts and lower the cost of regulation to Farmer Mac. This provision provides that the Farm Credit System institutions, other than Farmer Mac, are not obligated to pay the expenses of the Office of Secondary Market Oversight or related expenses in the regulation of Farmer Mac.

TITLE IV

The Agricultural Credit Act of 1987 added various provisions to the Farm Credit Act authorizing the Farm Credit System Financial Assistance Corporation (FAC) to issue bonds to finance assistance to financially-distressed FCS institutions, and obligating the FCS institutions to repay the principal and interest on those bonds.

The language in the bill would clarify and strengthen the FAC debt repayment provisions of the 1987 Act. Overall, the intent of the bill is to restate the FCS's obligation to repay all FAC debt, including Treasury-paid interest, and to permit these repayment obligations to be managed in a more businesslike way. The Committee believes this legislation satisfies the concerns and objectives that have been expressed by the U.S. Treasury and the Farm Credit Administration in the area of FAC debt repayment, and does it in a way that is less disruptive of FCS operations and the development of FCS financial strength, and more faithful to the policy determinations made by this Committee and Congress in the 1987 Act.

The following describes the four areas of FAC debt and the respective repayment plans:

1. Capital Preservation

During the 1980's, the FCS banks had voluntary Capital Preservation Agreements under which the banks provided assistance to each other to prevent borrower stock impairment. As the agricultural crisis worsened in the mid-1980's, the stronger banks reached the limit of their ability to assist the weaker ones, and disputes arose as to the validity of assistance accruals for the third quarter of 1986. As part of the assistance package enacted in 1987, Congress resolved this matter by adding Section 6.9(e) to the Farm Credit Act. Section 6.9(e) provides for FAC to issue 15-year, federally-guaranteed bonds to finance the payment of the third-quarter-1986 Capital Preservation Agreement accruals, and for the FCS banks to pay the annual interest and in year 15 the principal, on those bonds, allocated among the banks in accordance with relative accruing loan volumes. Section 6.9(e) also provides that, prior to the maturity of these FAC bonds in year 15, FAC debt shall not be booked as a liability of the FCS banks. Pursuant to Section 6.9(e), FAC issued $417 million of bonds due in 2003 and 2004. The statute does not presently contain any provision requiring the FCS banks to make provisions to fund gradually their year 15 principal repayment obligation over time.

The bill requires that the FCS banks pay to FAC, in annual annuity payments beginning in 1991 (except for one FCS bank with an especially weak capital position, which would begin in 1993), the principal of the $417 million in Capital Preservation Bonds. The Committee expects that annual annuity payments reflect yearly amounts necessary to cover the obligation in full and that to the extent possible the amount of each year's payment is equal over the pay out period. Adjustments up or down will occur but the Committee is concerned that small payments not be made in the early years leaving a large portion of the obligation to be paid in the later years. This occurrence would shift the burden to future farmers. All farmers benefit from the assistance establish by the 1987 Act and should pay their share. The Committee would like to ensure that today's farmers also pay their share.

It is intended that the annual payments under new Section 6.9 (e)(3)(D) shall be calculated in substantially the same fashion as is called for under existing agreements between FAC and the banks for cooperatives. Under those agreements, each bank's ultimate liability is estimated each year based on that bank's share of total accruing loan volume for the portion of the 15-year period that has thus far expired, and then the bank's annual payment is determined by calculating the stream of equal annual annuity payments that would accumulate by the end of year 15 (taking account of prior payments, and of the past and projected future earnings by FAC on all of the payments) to 90% of the bank's estimated ultimate liability. (The remaining 10%—or more precisely, the portion of the ultimate liability that turns out at the end of year 15 not to have been fully funded by the annual annuity payments—is paid to FAC by the bank at the end of year 15.) If a bank does not make its payment, or part of its payment, in any particular year because doing so would cause it to fail to satisfy applicable regulatory permanent capital requirements, then the annuity calculation formula automatically produces an increase in the amount of the annual payments the bank must make in subsequent years.

This provision will allow this obligation to be discharged in an orderly fashion, and the attendant cost to be properly reflected in FCS business operations. At the same time, it will achieve this result in a fashion less disruptive of FCS capital and financial statements than those proposed by the Department of Treasury.

2. Preferred Stock Assistance

The centerpiece of the assistance provisions of the 1987 Act is a mechanism, set forth principally in Section 6.26 of the Farm Credit Act, under which financially distressed FCS institutions can receive financial assistance from FAC and in exchange issue preferred stock to FAC.

Under this mechanism, FCS institutions are certified by the Assistance Board as in need of assistance. FAC is empowered to issue 15-year, federally-guaranteed bonds to raise the assistance funds. FAC provides the assistance to the certified institution.

Crucially, the preferred stock is accounted for as equity rather than debt of the assisted institution; this is essential in order for the assistance to strengthen the capital position of the assisted bank. Under the 1987 Act, which institution pays the principal of the FAC bonds depends on whether the assisted institution redeems its preferred stock in year 15. It will be permitted to redeem its stock, at its option, only if the Farm Credit Administration determines that the stock redemption does not affect its ability to remain viable and competitive; if the Farm Credit Administration permits redemption but the assisted institution elects not to redeem, then the preferred stock begins paying a high rate of dividends. If the institution does not redeem the preferred stock, the principal of the FAC bonds is paid out of, as necessary, the FAC Trust Fund, the FCSIC Insurance Fund, and the U.S. Treasury. (The payment of interest of these bonds is addressed later.) A total of $419 million in FAC bonds, due in 2003 and 2005, have been issued pursuant to these provisions to fund assistance to the Farm Credit Banks of Louisville, St. Paul, Omaha, and Spokane.

The bill requires the four Farm Credit Banks which have received the $419 million in preferred stock assistance from FAC to make annual appropriations of earnings to a special unallocated surplus account for preferred stock retirement each year until the maturity of the related FAC bonds in 2003 and 2005. This mandatory financial discipline should place those banks in a position to be able to retire the preferred stock when the FAC bonds mature. On the other hand, the proposal of the Farm Credit Administration to make preferred stock redemption mandatory would overturn the carefully crafted preferred stock provisions of the 1987 Act and defeat the whole purpose of the preferred stock financial assistance mechanism. If the assisted banks were forced to treat the preferred stock as debt, which would be the effect of the Farm Credit Administration's proposal, their successful economic recovery efforts, and indeed their very ability to do business, would be severely impaired.

3. Other Uses

Another provision of the Section 6.26 allows FAC to issue 15 year, federally-guaranteed bonds to finance the retirement of protected borrower stock and the expenses of the Assistance Board. The principal of these bonds is to be repaid in year 15 by all FCS banks and associations, in proportion to their relative performing loan volumes over the 15 year period. Some $37 million in FAC bonds, due in 2003 and 2005, have been issued pursuant to this provision. FCS institutions have been reflecting this accruing obligation on their annual financial statements, and thus effectively providing for its discharge in year 15.

The bill mandates that the FCS banks record as an expense each year the annual accrual of their obligation to repay FAC in 2003 and 2005 for the $37 million in principal of the FAC bonds that have been issued to finance the retirement of protected borrower stock and the expenses of the Assistance Board. This continues, and makes mandatory, the present practice.

4. Treasury Paid Interest

Currently Section 6.26 of the Farm Credit Act of 1971 contains complex provisions for the payment of interest on the Preferred Stock and Other Uses Bonds. Under these provisions, the interest during the first 5 years of each bond's term is paid by the Treasury, the interest during the second 5 years is paid in part by Treasury and in part by FCS banks and associations (allocated in proportion to relative performing loan volumes), and the interest for the final 5 years is paid entirely by the FCS banks and associations. The current provisions for the possible repayment by FCS banks and associations to Treasury, at some point following year 15, for the interest that Treasury paid (without interest on interest) give the Farm Credit Administration wide discretion to decide the timing and the allocation among FCS institutions. Also, the statute provides that if any FCS institution issues debt to finance repayment of the principal of these FAC bonds, then any obligation to repay Treasury paid interest is deferred until that debt is repaid. The repayment uncertainty created by these provisions is so great that individual FCS institution have been unable to reflect this repayment obligation on their financial statements as prepared in accordance with generally accepted accounting principles. It is, however, reflected on the Systemwide financial statements. The total Treasury paid interest may reach some $580 million, depending on the share that is paid by the FCS during the second 5 year period.

The bill requires that FAC repay to Treasury, immediately upon the last maturity date of FAC bonds, the full amount of all interest on FAC bonds paid by Treasury, and authorizes FAC to assess yearly all FCS banks at levels sufficient to raise the necessary funds to pay Treasury in full on the due date. Under the bill's annual assessment approach, each bank's financial statement would reflect the cumulative effect of this obligation. The bill also provides that the advance funding of this repayment should not reduce the banks' regulatory capital.

The bill also expands the default mechanisms, provides for FAC debt repayment by banks and associations that terminate system status or undergo liquidation, and clarifies that the FCS will repay all the interest paid by the Treasury.

TITLE V

The Farm Credit Act of 1971 contains a complicated formula prescribing the valuation of reserves against loan losses to be maintained by production credit associations. The statutory formula is unique in that it does not apply to any other type of FCS institution. The current language was included in the Act for the purpose of strengthening the favorable tax treatment of PCA's provision for loan losses at a time before the tax laws were changed to subject PCA provision for losses to taxation in the same manner as the provisions for losses of commercial banks, savings and loans and similar institutions are taxed. The bill provides that the PCA valuation of loan loss reserves be governed by generally accepted accounting principles, as is the case with other FCS institutions because the original purpose of the formula has now been eliminated.

Another provision in the bill reflects the Committee's continued concern about reducing the concentration of risk in the Banks for Cooperatives (BC's) system. The bill achieves this objective by modifying the risk management powers of the Banks for Cooperatives to improve the ability of the BC's to buy and sell loan participations. The authority will facilitate the establishment of bank-to-bank loan participation arrangements between Banks for Cooperatives and commercial lenders, thus enabling the BC's to utilize a common risk management technique for spreading credit risk among lenders.

Part of the Banks for Cooperatives' mission is to be a reliable provider of credit with the lending capacity to meet agriculture's large seasonal and term credit needs. The bill's provision would provide the flexibility to better manage risk through the more effective use of loan participations while continuing to meet credit needs of customers.

The bill expands the ability of the BC's to buy participation in loans to those made by non-system lenders to non-cooperative farm borrowers. The BC's are authorized under this bill to participate in loans made to ineligible borrowers that are considered to be "similar entities" to eligible borrowers. "Similar entities" are associations, corporations, and other groups or persons whose primary activities are the same as or similar to the primary activities engaged in by eligible borrowers but whose organizational structure disqualifies them from borrowing directly from a Bank for Cooperatives. The standards for borrower eligibility are set forth in Section 3.8 of the 1971 Act. To eliminate risk to the Farm Credit Banks, a BC may not participate in these types of loans without the specific permission of the district bank.

Under current law, nominating committees for FCS associations are charged with the responsibility of endeavoring to ensure representation to all sections of the association territory in choosing nominees for board positions. Stockholders have expressed concern that, in the event of merger, their locale could become unrepresented in the affairs of the merged entity. The Committee, in its effort to reduce the impediments of the FCS for the voluntary merger of district banks, has included in the bill a provision which would permit FCS banks and associations to provide through their bylaws, for election of some or all of their elected board members on a sectional or regional basis.

Section-by-Section Analysis

TITLE I—IMPROVEMENTS TO THE FARM CREDIT SYSTEM SAFETY AND SOUNDNESS

Section 101 encourages the Farm Credit Banks and the Bank for Cooperatives to establish an interbank agreement setting risk management and performance standards to improve the financial safety of the Farm Credit System (FCS) and promoting more uniform lending practices. The standards would be in addition to the Farm Credit Administration (FCA) regulatory requirements and would allow for the use of economic incentives to encourage compliance. The agreement would be required to include an enforcement mechanism.

The FCS would have until 180 days after enactment of the Farm Credit System Financial Safety and Soundness Act (the Act) to develop the interbank agreement. If the banks fail to sign an interbank agreement within the 180 day deadline, the FCS Funding Corporation would be granted the authority to establish financial condition and performance standards, and to institute economic incentives.

Section 102 would give the FCS Insurance Corporation the authority to require associations of district banks which have received assistance from the fund to purchase additional capital in the bank if the fund falls below 80% of the "secure base" and the bank's capital level is below the required minimum. The secure base is the minimum amount set for reserves in the Insurance Fund as provided in the 1987 Agricultural Credit Act and equals two percent of the aggregate outstanding insured obligations of the FCS (and lesser amounts during the phase-in of full funding of the secure base).

This section also permits banks and their associations to make agreements to allocate earnings among each bank and the related associations. Funds that are allocated may only be counted as capital once, either as capital of an association or as capital of the bank.

Section 103 sets minimum qualification standards for FCA Board members.

Section 104 creates a full-time Chief Executive Officer position for FCA and transfers authority for the day-to-day operations of FCA from the Chairman of the Board to the CEO.

Section 105 restructures the Farm Credit System Insurance Corporation Board by adding the Vice Chairman of the FDIC and a Governor of the Federal Reserve with agricultural expertise. This section also establishes a CEO position within the Insurance Corporation.

TITLE II—FARM CREDIT INSURANCE CORPORATION

Section 201 would require the General Accounting Office to report to Congress possible improvements to the insurance fund premium structure and whether to grant FCSIC the authority to access association capital directly and to collect supplemental insurance premiums. The section would also require GAO to look at the economic implications of further consolidation of the system and requiring the FCA and FCS to comply with Government Services Administration building standards.

Section 202 would clarify that the Insurance Corporation will be the successor to the Farm Credit System Assistance Board in its agreements with assisted FCS institutions.

TITLE III—CAPITAL REQUIREMENTS AND SUPERVISION OF THE FEDERAL AGRICULTURAL MORTGAGE CORPORATION

Section 301 establishes two capital levels for the Federal Agricultural Mortgage Corporation (Farmer Mac) and gives the Farm Credit Administration additional authority. FCA's authority would remain unchanged unless Farmer Mac's capital level fell below those established in this bill. If Farmer Mac's capital fell below the adequate capital level set in this bill, FCA would have the authority to approve a capital restoration plan. If Farmer Mac's capital fell below the critical capital level established in the bill, FCA would have the authority to promptly appoint a conservator for Farmer Mac.

Section 302 requires that FCA study and report to Congress on the risk to the federal government created by the operations of the Federal Agricultural Mortgage Corporation.

Section 303 requires that the Farm Credit Administration set up an independent division, the "Office of Secondary Market Oversight," within FCA with the sole purpose of regulating Farmer Mac and to hire personnel with expertise in secondary financial markets for that purpose.

TITLE IV—REPAYMENT OF DEBT OBLIGATIONS

The Agricultural Credit Act of 1987 provided for the Farm Credit System Assistance Corporation (FAC) to issue 15-year, federally guaranteed bonds to finance payment of the third-quarter, 1986 Capital Preservation Accruals. The FCS banks were to pay the annual interest, and in the 15th year, the principal on those bonds. Bonds worth $417 million have been issued and are due in 2003 and 2004.

Section 401 would establish a system of annual payments to the FAC to ensure the repayment of these bonds. Payments would begin In 1991 (except for one bank whose payments would begin in 1993).

The Agricultural Credit Act of 1987 authorized the Assistance Corporation to assist distressed institutions by providing financial assistance in exchange for preferred stock of the institution. A total of $419 million in bonds were issued by the FAC. These bonds become due in 2003 and 2005.

Section 402 would ensure that funds will be available to repay the principal of these bonds by requiring the four assisted banks to make annual appropriations of earnings to a special surplus account for retirement of the preferred stock held by FAC until the related bonds mature.

The 1987 Act also allows FAC to issue 15-year, federally-guaranteed bonds to finance (1) the retirement of protected borrower stock of FCS institutions and (2) the expenses of the Farm Credit System Assistance Board. $37 million in bonds, due in 2003 and 2005, have been issued.

Section 403 would require each bank to record as an annual expense the annual accrual of its estimated obligation to pay the bonds when they mature in 2003 and 2005.

Under the 1987 Act, interest on all FAC bonds (other than the Capital Preservation Bonds on which FCS banks pay all interest) is to be paid by the following arrangement: (1) during the first five years interest is paid by Treasury, (2) during the second five years interest is paid in part by Treasury and in part by FCS institutions, and (3) for the final five years interest is paid entirely by the FCS.

Section 404 would establish a time certain for the repayment to Treasury of interest on FAC debt paid by Treasury. FAC would be authorized to assess all FCS banks, beginning promptly, sufficient annual amounts to raise the necessary funds to pay Treasury in full on the due date. The assessment will be based on an annual amount equal to .0004 times the bank's and its affiliated associations' average accruing retail loan volume for the preceding year, subject to adjustment, as necessary, in the last five years.

Under Section 405, the Farm Credit Banks would be made primarily liable for all obligations of the FCS to repay the principal of bonds issued by FAC and the interest paid thereon by the Treasury, including repayment obligations placed on FCS associations by current law. The banks would also be required to pass the obligations on to their affiliated associations as necessary to ensure that the obligations are fully discharged.

Section 406 provides that the current statutory mechanism for handling defaults on certain interest payment obligations would be expanded to cover defaults on the payment of principal and interest on all bonds issued by the FAC (except the principal of bonds issued by FAC in exchange for preferred stock of assisted institutions, as there is already a default mechanism for this.)

Section 407 clarifies FAC's authority on repayment of FCS obligations related to FAC bonds, and extends FAC's life to two years after the last maturity date of FAC bonds.

Section 408 clarifies that the FCS will repay all of the interest paid by the Treasury.

TITLE V—MISCELLANEOUS

Section 501 changes the formula for prescribing the level of reserves against loan losses maintained by production credit associations. The level would now be governed by generally accepted accounting principles for PCAs as is the case for other FCS institutions.

Section 502 allows the banks for cooperatives to reduce their concentration of risk in terms of geographic, industry and specific account exposure by modifying the risk management powers to improve the ability of the banks for cooperatives to buy and sell loan participation from non-system lenders.

Section 503 is a technical change.

Section 504 permits FCS banks and associations to provide, through their bylaws, for the election of some or all of their elected board members on a sectional or regional basis, as opposed to exclusively on an at-large basis. This is to reduce the concern of stockholders that in the event of a merger, their locale may not have a representative on the board of the merged entity.

COST ESTIMATE

In accordance with the Congressional Budget Act of 1974, the Congressional Budget Office prepared the following cost estimate.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee made the following evaluation of the regulatory impact of S. 1709.

The Farm Credit Administration (FCA) remains the primary safety and soundness regulator of the Farm Credit System, including the Federal Agricultural Mortgage Corporation (Farmer Mac). The Farm Credit System Insurance Corporation remains the insurer of the obligations of the banks of the Farm Credit System.

FCA's regulatory responsibilities are expanded in several areas. FCA will be responsible for monitoring the implementation of the Interbank Agreement authorized by this Act and reporting to Congress when any standard set by the Agreement or incentive imposed under the agreement poses a safety and soundness concern.

The FCA will also be responsible for approving standards and incentives imposed by the Federal Farm Credit System Funding Corporation under new authorities granted by this Act that take effect if the banks are unable to reach agreement within 180 days after enactment or terminate an agreement they have reached.

FCA's regulatory authorities for Farmer Mac are expanded both through the creation of a new Office of Secondary Market Oversight and through the authority to appoint a conservator. Operating under the guidance and policies of the FCA Board and subject to Board review, the Director of the Office is authorized to examine the condition of Farmer Mac and its affiliates, ensure capital compliance, initiate enforcement actions under Part C of Title V, and appoint a conservator.

The Farm Credit System Insurance Corporation receives new authority to require associations to contribute capital to a related bank that has received assistance from the Insurance Corporation if the bank subsequently fails to meet its capital requirements and the Insurance Fund is 80% below the secure base amount.

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 4, 1991.

Hon. Patrick J. Leahy,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1709, the Farm Credit System Financial Safety and Soundness Act of 1991, as ordered reported by the Senate Committee on Agriculture, Nutrition, and Forestry on September 13, 1991. Enacting S. 1709 would significantly affect the federal budget only if the Administration implements its proposed treatment of the Farm Credit System Financial Assistance Corporation (FAC) as an on-budget governmental entity beginning in fiscal year 1993. CBO estimates that, if FAC spending and receipts are shown on the budget, S. 1709 would reduce outlays recorded on the budget by $40 million in fiscal year 1992, representing the present value of earlier debt services payments to be received by the government.

In addition, the bill would require the General Accounting Office (GAO) to investigate and report on several aspects of the Farm Credit System's insurance program for system institutions, including the effects of potential mergers of some institutions. Based on information provided by GAO, CBO estimates that the GAO reports would cost about $500,000, assuming appropriation of the necessary funds.

The Agricultural Credit Act of 1987 required a major reform of the government-sponsored Farm Credit System, including provisions for assistance to system institutions that were experiencing severe financial hardship during the 1980s. The FAC was created by the 1987 act to provide federally supervised assistance off-budget to financially troubled institutions. It was structured to appear as a privately owned component of the Farm Credit System. As the result of a provision in the 1989 Rural Development, Agriculture and Related Agencies Act, however, the Administration decided to categorize the FAC as a federal entity beginning in fiscal year 1993.

S. 1709 would require Farm Credit System banks to begin repaying the FAC for the two types of assistance provided under the 1987 act: capital preservation agreement loans, and assistance through the purchase of preferred stock. Under current law, system institutions are not required to repay the principal and some of the interest costs for FAC debt until after such debt is redeemed, beginning in 2003. S. 1709 would require some principal and interest payments to be made to the FAC beginning in fiscal year 1992. Specifically, the bill includes requirements for earlier repayment of principal on the capital preservation loans, and earlier payment of interest costs on the FAC debt incurred to finance the purchase of preferred stock.

If the FAC were treated as a federal entity, as envisioned under current law, then the assistance provided by FAC would be considered to be federal loans. As a result, any changes in the terms of those loans will be subject to the credit reform provisions enacted in the Budget Enforcement Act of 1990. Under credit reform, any legislated modification in federal loans must be shown on the budget on a net present value basis—representing the change in cost to the government over the life of the loans in question. CBO estimates that the earlier payments required by S. 1709 would reduce the costs of FAC loans by about $40 million on a net present value basis. This would be shown as negative outlays on the budget.

It is possible, in addition, that requiring earlier principal and interest payments on some of the FAC debt would increase the likelihood that the FAC would be paid all that it is owed. Although some farm credit institutions currently are setting aside funds for expected future payment to the FAC, there is some risk that not all banks would be able to meet their FAC payment obligations if there is no legal requirement for annual payments as specified in S. 1709. Hence, the bill would impose a repayment discipline that might reduce the probability of default on obligations to the FAC. The potential savings for requiring earlier payments to the FAC by system institutions are highly uncertain, however, because we cannot predict the relative financial health of the affected institutions over the next 20 years.

It is possible that the Administration would decide to reverse its decision to put the FAC on budget beginning in 1993. If the Administration were to continue treating the FAC as a (non-budgetary) private entity, then earlier payments to the FAC by system institutions would not be considered government receipts. The bill might still affect federal spending over the next 20 years or so, depending on whether the FAC defaults on any of its debt—because the government guarantees such debt, and because the system must ultimately repay the Treasury for payments to the FAC in support of FAC interest costs.

The bill also would make amendments to other provisions of the Farm Credit Act of 1971, pertaining to the Farm Credit System Insurance Corporation, potential mergers of system institutions, and capital requirements and supervision of the Federal Agricultural Mortgage Corporation (Farmer Mac). CBO estimates that these amendments would have no impact on the federal budget. The bill would expand the Farm Credit Administration's (FCA's) role in supervising Farmer Mac, and as a result, would probably increase FCA costs for such supervision. But since FCA recovers all of its administrative costs from the institutions that it regulates, including Farmer Mac, the increased supervision would have no net budgetary impact. Also, since Farmer Mac is an off-budget component of the Farm Credit System, any changes in its net expenditures would not affect the federal budget.

Enacting S. 1709 would have no effect on the budgets of state or local governments.

This bill would reduce direct spending by increasing the value of payments to the FAC by Farm Credit System institutions. As a result, S. 1709 would be subject to pay-as-you-go procedures of Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985. CBO estimates that enacting S. 1709 would reduce direct spending outlays by about $40 million in fiscal year 1992, assuming that the FAC is placed on budget in accordance with the Administration's current policy.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Peter Fontaine, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

ADDITIONAL VIEWS OF MESSRS. COCHRAN, LUGAR, HEFLIN, McCONNELL, PRYOR, BOREN, SEYMOUR, CRAIG, DOLE, HELMS, GRASSLEY

The Committee has chosen to restrict the Farm Credit System Financial Safety and Soundness Act to the central items that must be addressed concerning the government sponsored enterprise issues that are within the Committee's jurisdiction. It is our opinion that this legislation is not the appropriate place to address possible restructuring of farm credit banks or other Farm Credit System institutions. While structural issues should be given careful attention at the proper time, changes should not be legislated without full hearings, study, and debate.

One issue that has been brought to the Committee's attention deals with a proposal to merge a certain Federal intermediate credit bank with a farm credit bank in another farm credit district. A recent Court of Appeals ruling determined that the Federal intermediate credit bank in question could not be forced to merge with a farm credit bank not of its choosing. We understand that another appeal is presently before a Federal circuit court on this matter.

Due to the ongoing litigation, we believe the merger proposal should not be addressed at this time by legislation. We also believe that this issue should be resolved at the appropriate time in an orderly and just manner that will be agreeable to the institutions involved and will best serve the farmers and stockholders in the Farm Credit System at the least cost to the taxpayers.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1709 as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE I—IMPROVEMENTS TO FARM CREDIT SYSTEM SAFETY AND SOUNDNESS

FARM CREDIT ACT OF 1971

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TITLE IV—PROVISIONS APPLICABLE TO TWO OR MORE CLASSES OF INSTITUTIONS OF THE SYSTEM

PART A—FUNDING

Sec. 4.0. Revolving Fund * * *

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SEC. 4.3A. CAPITALIZATION OF SYSTEM INSTITUTIONS.

(a) DEFINITIONS.—As used in this section:

[(1) PERMANENT CAPITAL.—The term "permanent capital" means current year retained earnings, allocated and unallocated earnings, all surplus (less allowances for losses), and stock issued by a System institution, except stock that—

[(A) may be retired by the holder thereof on repayment of the holder's loan, or otherwise at the option or request of the holder; or

[(B) is protected under section 4.9A or is otherwise not at risk.]

(1) PERMANENT CAPITAL.—The term "permanent capital" means—

(A) current year retained earnings;

(B) allocated and unallocated earnings (which, in the case of earnings allocated in any form by a System bank to any association or other recipient and retained by the bank, shall be considered, in whole or in part, permanent capital of the bank or of any such association or other recipient as provided under an agreement between the bank and each such association or other recipient);

(C) all surplus (less allowances for losses);

(D) stock issued by a System institution, except—

(i) stock that may be retired by the holder of the stock on repayment of the holder's loan, or otherwise at the option or request of the holder; or

(ii) stock that is protected under section 4.9A or is otherwise not at risk; and

(E) any other debt or equity instruments or other accounts that the Farm Credit Administration determines appropriate to be considered permanent capital.

(2) STOCK.—The term "stock" means voting and nonvotting stock (including preferred stock), equivalent contributions to a guaranty fund, participation certificates, allocated equities, and other forms and types of equities.

(b) ADOPTION OF BYLAWS.—Subject to approval by shareholders under subsection (c)(2) of this section, each bank and association shall adopt bylaws, developed by its board of directors, that provide for the capitalization of the institution in accordance with subsection (c)(1) of this section.

(c) REQUIREMENTS OF BYLAWS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, the bylaws adopted under subsection (b) of this section—

(A) shall provide for such classes, par value, and amounts of the stock of the institution, the manner in which such stock shall be issued, transferred, and retired, and the payment of dividends and patronage refunds, as determined appropriate by the Board of Directors, subject to this section;

(B) may provide for the charging of loan origination fees as determined appropriate by the Board of Directors;

(C) shall enable the institution to meet the capital adequacy standards established under the regulations issued under section 4.3(a);

(D) shall provide for the issuance of voting stock, which may only be held by—

(i) borrowers who are farmers, ranchers, or producers or harvesters of aquatic products, and cooperative associations eligible to borrow from System institutions under this Act;

(ii) in the case of a Central Bank for Cooperatives, other banks for cooperatives; and

(iii) in the case of banks other than banks for cooperatives, System associations;

(E) shall require that—

(i) as a condition of borrowing from or through the institution, any borrower who is entitled to hold voting stock or participation certificates shall, at the time a loan is made, acquire voting stock or participation certificates in an amount not less than $1,000 or 2 percent of the amount of the loan, whichever is less; and

(ii) within 2 years after the loan of a borrower is repaid in full, any voting stock held by the borrower be converted to nonvoting stock;

(F) may provide that persons who are not borrowers from the institution may hold nonvoting stock of the institution;

(G) shall require that any holder of voting stock issued before the adoption of bylaws under this section exchange a portion of such stock for new voting stock;

(H) do not need to provide for maximum or minimum standards of borrower stock ownership based on a percentage of the loan of the borrower, except as otherwise provided in this section;

(I) shall permit the retirement of stock at the discretion of the institution if the institution meets the capital adequacy standards established under section 4.3(a); and

(J) shall permit stock to be transferable.

(2) EFFECTIVE DATE.—The bylaws adopted by the board of directors of a System institution under subsection (b) of this section shall take effect only on approval of a majority of the stockholders of such institution present and voting, or voting by written proxy, at a duly authorized stockholders' meeting.

(d) REDUCTION OF CAPITAL.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the board of directors of a System institution may not reduce the permanent capital of the institution through the payment of patronage refunds or dividends, or the retirement of stock if, after or due to such action, the permanent capital of the institution would thereafter fail to meet the minimum capital adequacy standards established under section 4.3(a).

(2) EXCEPTIONS.—Paragraph (1) shall not apply to the payment of noncash patronage refunds by any institution exempt from Federal income tax if the entire refund paid qualifies as permanent capital. Notwithstanding paragraph (1), any System institution subject to Federal income tax may pay patronage refunds partially in cash as long as the cash portion of the refund is the minimum amount required to qualify the refund as a deductible patronage distribution for Federal income tax purposes and the remaining portion of the refund paid qualifies as permanent capital.

(e) COMPLIANCE.—The Farm Credit Administration may issue a directive that requires compliance with subsection (d), to the board of directors of any System institution that fails to comply therewith.

(f) CONSTRUCTION.—This section shall not be construed to affect the provisions of this Act that confer on System institutions a lien on borrower stock or other equities and the privilege to retire or cancel such stock or other equities for application against the indebtedness on a defaulted or restructured loan.

(g) CONGROLLING AUTHORITY.—To the extent that any provision of this section is inconsistent with any other provision of this Act (other than section 4.9A), the provision of this section shall control.

* * * * * * *

SEC. 4.9. FEDERAL FARM CREDIT BANKS FUNDING CORPORATION.

(a) ESTABLISHMENT.—There is hereby established the Federal Farm Credit Banks Funding Corporation (hereinafter in this section referred to as the "Corporation"), which shall be an institution of the Farm Credit System.

(b) DUTIES.—The Corporation—

(1) shall issue, market, and handle the obligations of the banks of the Farm Credit System, and interbank or intersystem flow of funds as may from time to time be required;

(2) acting for the banks of the Farm Credit System, subject to approval of the Farm Credit Administration, shall determine the amount, maturities, rates of interest, terms, and conditions of participation by the several banks in each issue of joint, consolidated, or System-wide obligations; and

(3) shall exercise such other powers as were provided to the predecessor Federal Farm Credit Banks Funding Corporation in accordance with its charter issued under section 4.25, in effect immediately before the date of the enactment of the Agricultural Credit Act of 1987.

(c) OFFICERS AND COMMITTEES.—

(1) DESIGNATION.—The board of directors may designate such officers and committees for such terms and such purposes as may be agreed on by the board.

(2) ISSUANCE OF OBLIGATIONS.—When appropriate to the board's functions under this section, a committee of the board of directors of the Corporation, or representatives thereof, may act on behalf of the board in connection with the issuance of joint, consolidated, and System-wide obligations.

(d) BOARD OF DIRECTORS.—

(1) COMPOSITION.—The board of directors shall be composed of [nine voting members and one nonvoting member, as follows:

[(A) Four voting members shall be current or former directors of the System banks elected by the shareholders of the Corporation.

[(B) Three voting members shall be chief executive officers or presidents of System banks elected by the shareholders of the Corporation.] *one voting representative from each bank of the System, two voting members appointed by the bank representatives, and one nonvoting member as follows:*

(A) At least two-thirds of the voting representatives from banks of the System shall be current or former directors of the System banks elected by the shareholders of the Corporation. The remaining voting representatives from banks of the System shall be chief executive officers or presidents of System banks elected by shareholders of the Corporation.

[(C)] *(B)* Two voting members shall be appointed by the members elected under subparagraphs (A) [and (B)] after the elected members have received recommendations for such appointments from, and consulted with, the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve System. The appointed members shall be selected from United States citizens—

(i) who are not borrowers from, shareholders in, or employees or agents of any System institution, who are not affiliated with the Farm Credit Administration, and who are not actively engaged with a bank or investment organization that is a member of the Corporation's selling group for System-wide securities; and

(ii) who are experienced or knowledgeable in corporate and public finance, agricultural economics, and financial reporting and disclosure.

[(D)] *(C)* The president of the Corporation shall serve as a nonvoting member of the board.

In selecting candidates under subparagraphs (A) and (B), due consideration shall be given to choosing individuals knowledgeable in agricultural economics, public and corporate finance, and financial reporting and disclosure.

(2) NONVOTING REPRESENTATIVES.—

(A) ASSISTANCE BOARD.—During the period in which the Assistance Board is in existence, the board of directors of the Assistance Board shall designate one of its directors to serve as a nonvoting representative to the board of directors of the Corporation.

(B) INSURANCE CORPORATION.—After such period, the board of directors of the Farm Credit System Insurance Corporation may designate one of its directors to serve as a nonvoting representative to the board of directors of the Corporation.

(C) MEETINGS.—The persons so designated by the Assistance Board and by the Farm Credit System Insurance Corporation may attend and participate in all deliberations of the board of directors of the Corporation.

(e) TRANSITIONAL AUTHORITY.—Until a majority of the voting members of the board of directors of the Corporation is elected, which shall occur as soon as is practicable after the enactment of this section—

(1) the finance committee established under section 4.5 in effect before the date of the enactment of this section, and the fiscal agency established under section 4.9 in effect before such date of enactment, shall continue to operate as if this section had not been enacted; and

(2) the board of directors of the predecessor Federal Farm Credit Banks Funding Corporation shall be the board of directors of the Financial Assistance Corporation.

(f) SUCCESSION.—

(1) ASSETS AND LIABILITIES.—The Corporation shall, by operation of law and without any further action by the Farm Credit Administration, the predecessor Federal Farm Credit Banks Funding Corporation (hereinafter referred to in this subsection as "the predecessor corporation") chartered under this Act, or any court, succeed to the assets of and assume all debts, obligations, contracts, and other liabilities of the predecessor corporation, matured or unmatured, accrued, absolute, contingent or otherwise, and whether or not reflected or reserved against on balance sheets, books of account, or records of the predecessor corporation.

(2) CONTRACTS.—The existing contractual obligations, security instruments, and title instruments of the predecessor corpo-

ration shall, by operation of law and without any further action by the Farm Credit Administration, the predecessor corporation, or any court, become and be converted into obligations, entitlements, and instruments of the Corporation.

(3) STOCK.—The stock of the predecessor corporation issued before the date of the enactment of this section shall, by operation of law and without any further action by the Farm Credit Administration, the predecessor corporation, or any court, become and be converted into stock of the Corporation established by this section.

(4) TAXATION.—The succession to assets, assumption of liabilities, conversion of obligations, instruments, and stock, and effectuation of any other transaction by the Corporation to carry out this subsection shall not be treated as a taxable event under the laws of any State or political subdivision thereof.

* * * * * * *

SEC. 4.40. LENDING AND RISK MANAGEMENT STANDARDS.

(a) COOPERATIVE INTERBANK AGREEMENT.—Each of the banks of the System shall enter into a cooperative interbank agreement (hereafter in this section referred to as the 'Interbank Agreement'), with all the other banks of the System, that establishes for the banks, consistent with the policy and objectives of the System as contained in section 1.1—

(1) risk management and performance standards;

(2) an effective means of monitoring compliance with the standards;

(3) an effective means of establishing and imposing incentives to ensure compliance with the standards; and

(4) a means to adopt subsequent amendments to the Interbank Agreement.

(b) NO REDUCTION OF OTHER AUTHORITY.—The Interbank Agreement or any incentive imposed under such Agreement shall not—

(1) diminish any rulemaking, examination, enforcement, or any other statutory authority of the Farm Credit Administration; or

(2) diminish the authority of the Funding Corporation as set forth in section 4.9(b).

(c) FARM CREDIT ADMINISTRATION REVIEW.—After all of the banks of the System have entered into the Interbank Agreement, the Farm Credit Administration shall—

(1) monitor the implementation of the Interbank Agreement, and amendments to the Agreement; and

(2) report to Congress, whenever it determines that a standard or incentive may pose a safety and soundness concern.

(d) AUTHORITY OF FUNDING CORPORATION IF BANKS FAIL TO REACH AGREEMENT.—

(1) IN GENERAL.—If the banks of the System fail to enter into an Interbank Agreement in accordance with this section within 180 days after the date of enactment of this section, or thereafter terminate the Agreement, The Federal Farm Credit Banks Funding Corporation established under section 4.9 (hereafter in this section referred to as the 'Corporation') shall have the au-

thority, in connection with its authority to determine conditions of participation pursuant to section 4.9(b)(2), to—

(A) gather information;

(B) establish risk management and performance standards acceptable to the Farm Credit Administration for System banks and their related associations;

(C) monitor the risk management and performance of System banks and their related associations and compliance with the standards; and

(D) establish and impose incentives acceptable to the Farm Credit Administration to encourage compliance by System banks and their related associations with risk management and performance standards established by the Corporation.

(2) TYPES OF INCENTIVES.—The incentives established and imposed pursuant to this subsection may include—

(A) differential pricing of joint, consolidated, or Systemwide obligations to the individual banks of the System;

(B) the imposition of premiums or penalties on banks that fail to meet established risk management and performance standards; or

(C) such other incentives as may be determined appropriate by the Board of Directors of the Corporation.

(3) USE OF INCENTIVES TO PAY TREASURY.—The Corporation shall pay all funds derived from incentives imposed under this subsection to the Farm Credit System Financial Assistance Corporation for the repayment of interest paid by the Secretary of the Treasury under section 6.26(c)(5).

(4) USE OF INCENTIVES TO FUND THE INSURANCE FUND.—

(A) IN GENERAL.—After the obligations to the Secretary of the Treasury referred to in paragraph (3) are satisfied, all remaining funds derived from incentives imposed under this subsection shall be paid into the Farm Credit Insurance Fund established under section 5.60.

(B) NOT SECURE BASE AMOUNT.—Funds paid into the Insurance Fund under subparagraph (A) (including any earnings on the funds) shall not be counted toward the secure base amount (as defined in section 5.55(c)).

(5) APPROVALS REQUIRED FOR IMPOSITION OF ECONOMIC INCENTIVES.—

(A) IN GENERAL.—No incentive shall be imposed on any System bank or association under this subsection without the approval of—

(i) the Board of Directors of the Corporation;

(ii) the Farm Credit Administration; and

(iii) the Farm Credit System Assistance Board or the Farm Credit System Insurance Corporation, if the bank has received assistance from such Board or Corporation, as the case may be.

(B) CONFLICTS OF INTEREST.—A member of the Board of Directors of the Corporation, who is also a chief executive officer, president, director, or former director, of the bank that would be subject to the imposition of the proposed incentive, shall recuse himself or herself from voting regard-

ing the imposition of an incentive by the Board of Directors of the Corporation.

(C) Financial condition of banks.—The Farm Credit Administration and the Farm Credit System Insurance Corporation may disapprove the imposition of an incentive on a System bank or association if either determines that the imposition of the incentive would significantly weaken the financial condition of any such System bank or association.

TITLE V—FARM CREDIT ADMINISTRATION ORGANIZATION

Part B—Farm Credit Administration Organization

SEC. 5.7. THE FARM CREDIT ADMINISTRATION.

The Farm Credit Administration shall be an independent agency in the executive branch of the Government. It shall be composed of the Farm Credit Administration Board and such other personnel as are employed in carrying out the functions, powers, and duties vested in the Farm Credit Administration by this Act.

SEC. 5.8. THE FARM CREDIT ADMINISTRATION BOARD; APPOINTMENT; TERMS OF OFFICE; ORGANIZATION AND COMPENSATION.

(a) The management of the Farm Credit Administration shall be vested in a Farm Credit Administration Board (referred to in this part as "the Board"). The Board shall consist of three members, who shall be citizens of the United States and broadly representative of the public interest. Members of the Board shall be appointed by the President, by and with the advice and consent of the Senate. Not more than two members of the Board shall be members of the same political party. Of the persons thus appointed, one shall be designated by the President to serve as Chairman of the Board for the duration of the member's term. The members of the Board shall be ineligible during the time they are in office and for two years thereafter to hold any office, position, or employment in any institution of the Farm Credit System.

(b) The term of office of each member of the Board shall be six years, except that the terms of the two members, other than the Chairman, first appointed under subsection (a) of this section shall expire, one on the expiration of two years after the date of appointment, and one on the expiration of four years after the date of appointment. Members of the Board shall not be appointed to succeed themselves, except that the members first appointed under subsection (a) of this section for a term of less than six years may be reappointed for a full six-year term and members appointed to fill unexpired terms of three years or less may be reappointed for a full six-year term. Any vacancy shall be filled for the unexpired term on like appointment. Any member of the Board shall continue to serve as such after the expiration of the member's term until a successor has been appointed and qualified.

(c) Each member of the Board, within fifteen days after notice of appointment, shall subscribe to the oath of office. The Board may transact business if a vacancy exists, provided a quorum is present. A quorum shall consist of two members of the Board. The Board shall hold at least one meeting each month and such additional meetings at such times and places as it may fix and determine.

Such meetings shall be held on the call of the Chairman or any two Board members. The Board shall adopt such rules as it deems appropriate for the transaction of business by the Board, and shall keep permanent and accurate records and minutes of the actions and proceedings of the Board.

(d) The members of the Board shall devote their full time and attention to the business of the Board. The Chairman of the Board shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of Title 5 of the United States Code. Each of the other members of the Board shall receive compensation at the rate prescribed for level IV of the Executive Schedule under section 5315 of Title 5 of the United States Code. Each member of the Board shall be reimbursed for necessary travel, subsistence, and other expenses in the discharge of the member's official duties without regard to other laws with respect to allowance for travel and subsistence of officers and employees of the United States. This subsection shall be subject to the provisions of section 5.11 of the Act.

(e) The members of the Board shall—

(1) be experienced or knowledgeable in agricultural economics and financial reporting and disclosure;

(2) experienced or knowledgeable in the regulation of financial entities; or

(3) have a strong financial, legal, or regulatory background.

SEC. 5.9. POWERS OF THE BOARD.

[The Board] *(a) The Board* shall manage and administer, and establish policies for, the Farm Credit Administration. It—

(1) shall approve the rules and regulations for the implementation of this Act not inconsistent with its provisions;

(2) shall provide for the examination of the condition of, and general regulation of the performance of the powers, functions, and duties vested in, each institution of the Farm Credit System;

(3) shall provide for the performance of all the powers and duties vested in the Farm Credit Administration; and

(4) may require such reports as it deems necessary from the institutions of the Farm Credit System.

(b) The Board is authorized to delegate any of its powers, except rulemaking, to a panel of the Board, an individual Board member, or to the Chief Executive Officer. Any authority delegated to the Chief Executive Officer may, with approval of the Board, be redelegated to officers or employees of the Farm Credit Administration.

SEC. 5.10. *CHIEF EXECUTIVE OFFICER AND* CHAIRMAN; RESPONSIBILITIES; GOVERNING STANDARDS

(a)[(1) The Chairman of the Board shall be the chief executive officer of the Farm Credit Administration.] *(1) A Chief Executive Officer shall be selected by the Board and shall serve at the pleasure of the Board. The Chief Executive Officer shall possess a strong financial, legal, or regulatory background and have previous management experience or strong management abilities.*

[(2) In carrying out the responsibilities of the chief executive officer, the Chairman shall be responsible for directing the implementation of policies and regulations adopted by the Board and, after consultation with the Board, the execution of the administrative functions and duties of the Farm Credit Administration.]

(2) The Chief Executive Officer shall be responsible for directing the implementation of policies and regulations adopted by the Board and the execution of the administrative functions and duties of the Farm Credit Administration.

(3) In carrying out policies as directed by the Board, the Chairman shall act as spokesperson for the Board and represent the Board and the Farm Credit Administration in their official relations within the Federal Government.

(4) Under policies adopted by the Board, the Chairman shall consult on a regular basis with—

(A) the Secretary of the Treasury concerning the exercise, by the System, of the powers conferred under section 4.2;

(B) the Board of Governors of the Federal Reserve system concerning the effect of System lending activities on national monetary policy; and

(C) the Secretary of Agriculture concerning the effect of System policies on farmers, ranchers, and the agricultural economy.

(b) In carrying out responsibilities under this Act, the [Chairman of the Board] *Chief Executive Officer* shall be governed by general policies adopted by the Board and by such regulatory decisions, findings, and determinations as the Board may by law be authorized to make and, as to third persons, all acts of the [Chairman of the Board] *Chief Executive Officer* shall be conclusively presumed to be in compliance with such general policies and regulatory decisions, findings, and determinations.

(c) [The Chairman of the Board] *Chief Executive Officer* shall enforce the rules, regulations, and order of the Board. Except as provided in section 518 of Title 28 of the United States Code, relating to litigation before the Supreme Court, attorneys designated by the [Chairman] *Chief Executive Officer* shall represent the Farm Credit Administration in any civil proceeding or civil action brought in connection with the administration of conservatorships and receiverships. Attorneys designated by the [Chairman] *Chief Executive Officer* may represent the Farm Credit Administration in any other civil proceedings or civil action when so authorized by the Attorney General under provisions of Title 28.

SEC. 5.11. ORGANIZATION OF THE FARM CREDIT ADMINISTRATION

(a) POLICIES OF THE BOARD.—The [Chairman of the Farm Credit Administration Board] *Chief Executive Officer* in carrying out the powers and duties vested in the [Chairman] *Chief Executive Officer* by this Act, and Acts supplementary thereto, shall be governed by policies of the Board and by such regulatory decisions, findings, and determinations as the Board may be law be authorized to make.

(b) APPOINTMENTS.—The [Chairman of the Board] *Chief Executive Officer* shall appoint such personnel as may be necessary to carry out the functions of the Farm Credit Administration. The appointment by the [Chairman] *Chief Executive Officer* of the major administrative divisions [under the Board] *of the Farm Credit Administration* shall be subject to the approval of the Board.

(c) PERSONNEL.—

(1) APPOINTMENTS BY BOARD MEMBERS.—Personnel employed regularly and full-time in the immediate offices of Board members shall be appointed by each such Board member.

(2) OFFICERS AND EMPLOYEES.—

(A) APPOINTMENT, COMPENSATION, AND BENEFITS.—[The Chairman] *except as otherwise provided in Section 8.11(a)(2), the Chief Executive Officer, with approval of the Board,* shall fix the compensation and number of, and appoint and direct, employees of the Administration. The [Chairman] *Chief Executive Officer, with approval of the Board,* may set and adjust the rates of basic pay for employees of the Administration without regard to the provisions of chapter 51, or subchapter III of chapter 53, of Title 5, United States Code. The [Chairman] *Chief Executive Officer, with approval of the Board,* may provide such additional compensation and benefits to employees of the Administration as is necessary to maintain comparability with the total amount of compensation and benefits provided by other Federal bank regulatory agencies. In setting and adjusting the total amount of compensation and benefits for employees of the Administration, the [Chairman] *Chief Executive Officer* shall consult with, and seek to maintain comparability with, other Federal bank regulatory agencies.

(B) OTHER FEDERAL BANK REGULATORY AGENCIES DEFINED.—For purposes of this subsection, the term "other Federal bank regulatory agencies" has the same meaning given to the term "appropriate Federal banking agency" in section 3(q) of the Federal Deposit Insurance Act.

(C) ETHICS IN GOVERNMENT.—The officers and employees of the agency shall be—

(i) subject to the Ethics in Government Act of 1978; and

(ii) considered officers or employees of the United States for the purposes of sections 201 through 203, and sections 205 through 209, of Title 18, United States Code.

(3) DELEGATION.—The powers of the [Chairman as chief executive officer] *Chief Executive Officer* necessary for day to day management may be exercised and performed by the [Chairman] *Chief Executive Officer* through such other officers and employees of the Administration as the [Chairman] *Chief Executive Officer* shall designate[, except that the Chairman may not delegate powers specifically reserved to the Chairman by this Act without Board approval].

(d) FUNDING.—The operations of the Farm Credit Administration, and the salaries of members of the Board and employees of the Administration, shall be funded and paid for from the fund created under section 5.15.

SEC. 5.12. ADVISORY COMMITTEES.

The [Chairman of the Board] *Chief Executive Officer,* subject to the approval of the Board, may establish one or more advisory committees in accordance with the Federal Advisory Committee Act [and may appoint to such committee or committees individuals who are members of the Federal Farm Credit Board when such Board is terminated by the Farm Credit Amendments Act of 1985].

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PART E—FARM CREDIT SYSTEM INSURANCE CORPORATION

SEC. 5.51. DEFINITIONS

As used in this part:

(1) BOARD OF DIRECTORS.—The term "Board of Directors" means the Board of Directors of the Corporation.

(2) CORPORATION.—The term "Corporation" means the Farm Credit System Insurance Corporation established in section 5.52.

(3) INSURED OBLIGATION.—The term "insured obligation" means any note, bond, debenture, or other obligation issued under subsection (c) or (d) of section 4.2—

(A) on or before January 5, 1989, on behalf of any System bank; and

(B) after such date, which, when issued, is issued on behalf of any insured System bank.

(4) INSURED SYSTEM BANK.—The term "insured System bank" means any System bank whose participation in notes, bonds, debentures, and other obligations issued under subsection (c) or (d) of section 4.2 is insured under this part.

(5) RECEIVER.—The term "receiver" means a receiver or conservator appointed by the Farm Credit Administration for a System institution.

(6) STATE.—The term "State" means any of the 50 States, the District of Columbia, any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands.

SEC. 5.52. ESTABLISHMENT OF FARM CREDIT SYSTEM INSURANCE CORPORATION

There is hereby established the Farm Credit System Insurance Corporation which shall insure, in accordance with this part, the timely payment of principal and interest on notes, bonds, debentures, and other obligations issued under subsection (c) or (d) of section 4.2 on behalf of one or more System banks all of which are entitled to the benefits of insurance under this part.

SEC. 5.53. BOARD OF DIRECTORS.

(a) ESTABLISHMENT.—The Corporation shall be managed by a Board of Directors that shall consist of the members of the Farm Credit Administration Board, *a Governor of the Federal Reserve who is skilled in agricultural economics, an the Vice Chairman of the Federal Deposit Insurance Corporation.*

(b) CHAIRMAN.—The Board of Directors shall be chaired by any Board member other than the Chairman of the Farm Credit Administration Board.

(c) POWERS OF THE BOARD.—The Board shall establish policies for the Farm Credit System Insurance Corporation. The Board shall—

(1) provide for the performance of all the powers and duties vested in the Corporation, and

(2) shall select and hire a Chief Executive Officer.

SEC. 5.53A. CHIEF EXECUTIVE OFFICER.

(a) IN GENERAL.—The Chief Executive Officer of the Corporation shall serve at the pleasure of the Board and shall be charged with carrying out the general policies adopted by the Board.

(b) RESPONSIBILITIES.—The Chief Executive Officer shall be responsible for directing the implementation of policies and regulations adopted by the Board and the execution of the daily administrative functions and duties of the Corporation.

(c) QUALIFICATIONS.—The Chief Executive Officer shall possess a strong financial, legal or regulatory background and have previous management experience or strong management abilities.

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SEC. 5.59. CONDUCT OF CORPORATE AFFAIRS; EXAMINATION OF INSURED SYSTEM BANKS.

(a) CONDUCT OF CORPORATE AFFAIRS.—

(1) FAIR ADMINISTRATION.—The Board of Directors shall administer the affairs of the Corporation fairly and impartially and without discrimination.

(2) OBLIGATIONS AND EXPENSES.—The Board of Directors shall determine and prescribe the manner in which the obligations of the Corporation may be incurred and the expenses of the Corporation may be allowed and paid.

(3) USE OF MAILS.—The Corporation may use the United States mails in the same manner and under the same conditions as the executive departments of the Federal Government.

(4) USE OF INFORMATION.—The Corporation, with the consent of any board, commission, independent establishment, or executive department of the Federal Government, including any field service thereof, may avail itself of the use of information, services, and facilities thereof in carrying out this part.

(5) USE OF FCA PERSONNEL.—To the extent practicable, the Corporation shall use the personnel and resources of the Farm Credit Administration to minimize duplication of effort and to reduce costs.

(b) EXAMINATION OF INSURED SYSTEM BANKS.—

(1) APPOINTMENT OF EXAMINERS.—The Board of Directors may appoint examiners who may, on behalf of the Corporation, examine any insured System bank, any production credit association, any other association making direct loans under authority provided under section 7.6, and any System institution in receivership, if in the judgment of the Board of Directors an examination of the institution is necessary.

(2) POWERS AND REPORT.—Each examiner may make a thorough examination of all affairs of the institution, and shall make a full and detailed report of the condition of the institution to the Corporation.

(3) APPOINTMENT OF CLAIM AGENTS.—The Board of Directors, in like manner, shall appoint claim agents who may investigate and examine all claims for insured obligations.

(c) Oath, Affirmations, and Testimony.—In connection with examinations under this section, the Corporation or its designated representatives may administer oaths and affirmations, and may examine, take, and preserve testimony under oath, as to any matter with respect to the affairs of any such institution.

(d) Cooperation With FCA Examiners.—The examiners appointed by the Board of Directors shall cooperate to the maximum extent possible with examiners of the Farm Credit Administration to minimize duplication of effort and minimize costs.

SEC. 5.60. INSURANCE FUND.

(a) Establishment.—There is hereby established a Farm Credit Insurance Fund (hereinafter referred to in this section as the "Insurance Fund") for insuring the timely payment of principal and interest on insured obligations. The assets in the Fund shall be held by the Corporation for the uses and purposes of the Corporation.

(b) Amounts in Fund.—

(1) Revolving fund.—All amounts in the revolving fund established by section 4.0 shall be transferred into the Farm Credit Insurance Fund on January 1, 1989, or 12 months after the date of the enactment of this part, whichever is later, except that the obligations to, and rights of, any person in such revolving fund arising out of any event or transaction before the date of the enactment of this part shall remain unimpaired.

(2) Deposit of premiums.—The Corporation shall deposit in the Insurance Fund all premium payments received by the Corporation under this part.

(c) Uses of Fund.—

(1) Mandatory use.—Beginning January 1, 1993, the Corporation shall expend amounts in the Insurance Fund to the extent necessary to insure the timely payment of interest and principal on insured obligations.

(2) Other mandatory uses.—Beginning January 1, 1993, the Corporation shall use amounts in the Insurance Fund to—

(A) satisfy System institution defaults through the purchase of preferred stock or other payments as provided for in section 6.26(d)(3); and

(B) ensure the retirement of eligible borrower stock at par value under section 4.9A.

(3) Permissive uses.—The Corporation may expend amounts in the Insurance Fund to carry out section 5.61 and to cover the operating costs of the Corporation.

(4) Corporate payment or refunds.—The Corporation shall make all payments and refunds required to be made by the Corporation under this part from amounts in the Insurance Fund.

SEC. 5.61. POWERS OF CORPORATION WITH RESPECT TO TROUBLED INSURED SYSTEM BANKS.

(a) Authority to Provide Assistance.—

(2) In general.—The Corporation, in its sole discretion and on such terms and conditions as the Board of Directors may prescribe, may make loans to, purchase the assets or securities

of, assume the liabilities of, or make contributions to, any insured System bank if such action is taken—

(A) to prevent the placing of the bank in receivership;

(B) to restore the bank to normal operation; or

(C) to reduce the risk to the Corporation posed by the bank when severe financial conditions threaten the stability of a significant number of insured System banks or of insured System banks possessing significant financial resources.

(2) ENUMERATED POWERS.—

(A) FACILITATION OF MERGERS OR CONSOLIDATION.—To facilitate a merger or consolidation of a qualifying insured System bank, the sale of assets of such insured System bank to another insured System bank, the assumption of such insured System bank's liabilities by such other insured System bank, or the acquisition of the stock of such insured System bank by such other insured System bank, the Corporation, in its sole discretion and on such terms and conditions as the Board of Directors may prescribe, may—

(i) purchase any such assets or assume any such liabilities;

(ii) make loans or contributions to, or purchase debt securities of, such other insured System bank;

(iii) guarantee such other insured System bank against loss by reason of such other insured System bank's merging or consolidating with, or assuming the liabilities and purchasing the assets of, such insured System bank; or

(iv) take any combination of the actions referred to in the preceding clauses.

(B) QUALIFYING INSURED SYSTEM BANK.—For purposes of subparagraph (A), the term, "qualifying insured System bank" means any insured System bank that—

(i) is in receivership;

(ii) is, in the judgment of the Board of Directors, in danger of being placed in receivership; or

(iii) is, in the sole discretion of the Corporation, an insured System bank that, when severe financial conditions exist that threaten the stability of a significant number of insured System banks or of insured System banks possessing significant financial resources, requires assistance under subparagraph (A) to lessen the risk to the Corporation posed by such insured System bank under such threat of instability.

(C) CONTRIBUTIONS TO CAPITAL.—

(i) IN GENERAL.—If the amount in the Insurance Fund falls below 80 percent of the secure base amount (or falls below 80 percent of the prior year end balance until the secure base amount is reached), and a bank to which assistance has been provided by the Corporation under paragraph (1) or subparagraph (A) subsequently fails to meet its minimum level of capital established by the Farm Credit Administration under section 4.3,

the Corporation may, in its sole discretion, require related associations of each such bank to subscribe to an amount of additional stock in the bank that is sufficient to enable the bank to meet the minimum level of capital established under section 4.3.

(ii) Limitation.—An additional amount of stock shall not be required under clause (i) to the extent that subscribing to the additional stock would cause the capital of an association to fall below 120 percent of its minimum level established under section 4.3.

(3) Limitation.—

(A) Cost of liquidation.—Assistance shall not be provided to an insured System bank under this subsection if the amount of such assistance exceeds an amount determined by the Corporation to be the cost of liquidating the bank (including paying the insured obligations issued on behalf of the bank). This subparagraph shall not apply to the provision of assistance to a bank if the Corporation determines that the continued operation of the bank is essential to provide adequate agricultural credit services in the area of operations of the bank.

(B) Purchase of stock.—The Corporation may not use its authority under this subsection to purchase any stock of an insured System bank. The preceding sentence shall not be construed to limit the ability of the Corporation to enter into and enforce covenants and agreements that it determines to be necessary to protect the financial interests of the Corporation.

(4) Subordination.—Any assistance provided under this subsection may be in subordination to the rights of owners of obligations and other creditors.

(5) Reports.—The Corporation, in its annual report to Congress, shall report the total amount saved, or its estimates to be saved, by the Corporation exercising the authority provided to the Corporation in this subsection.

(b) Authority To Pledge or Sell Assets.—The Corporation, in its discretion, may make loans on the security of, or may purchase, and liquidate or sell, any part of the assets of, any insured System bank that is placed in receivership because of the inability of the bank to pay principal or interest on any of its notes, bonds, debentures, or other obligations in a timely manner.

(c) Subrogation.—

(1) In general.—On the payment to an owner of an insured obligation issued on behalf of an insured System bank in receivership, the Corporation shall be subrogated to all rights of the owner against the bank to the extent of the payment.

(2) Receipt of dividends.—Subrogation under paragraph (1) shall include the right on the part of the Corporation to receive the same dividends from the proceeds of the assets of the bank as would have been payable to the owner on a claim for the insured obligation.

(d) Right to Assets.—Any agreement that shall diminish or defeat the right, title, or interest of the Corporation in any asset acquired by such Corporation under this section, either as security

for a loan or by purchase, shall not be valid against the Corporation unless the agreement—

(1) is in writing;

(2) is executed by the bank and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the bank;

(3) has been approved by the board of directors of the bank or its loan committee, which approval shall be reflected in the minutes of the board or committee; and

(4) has been, continuously, from the time of its execution, an official record of the bank.

(e) INSURED SYSTEM BANK.—As used in this section, the terms "insured System bank" and "bank" include each production credit association and other association making direct loans under the authority provided under section 7.6.

(f) EFFECTIVE DATE.—The Corporation shall not exercise any authority under this section prior to January 1, 1993.

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TITLE II—FARM CREDIT SYSTEM INSURANCE CORPORATION

FARM CREDIT ACT OF 1971

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TITLE V—FARM CREDIT ADMINISTRATION ORGANIZATION

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PART C—ENFORCEMENT POWERS OF FARM CREDIT ADMINISTRATION

SEC. 5.25. CEASE AND DESIST PROCEEDINGS. * * *

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SEC. 5.35. DEFINITIONS.—

As used in this part—

(1) the terms "cease and desist order which has become final" and "order which has become final" mean a cease and desist order, or an order, issued by the Farm Credit Administration with the consent of the System institution or the director or officer or other person concerned, or with respect to which no petition for review of the action of the Farm Credit Administration has been filed and perfected in a court of appeals as specified in section 5.30(b) of this Act, or with respect to which the action of the court in which such petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in section 5.30(b) of this Act, or an order issued under section 5.29 of this Act;

(2) the term "violation" includes without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation;

(3) the terms "institution in the System," "System institution," and "institution" means all institutions enumerated in

section 1.2 of this Act, any service organization chartered under part D of title IV of this Act, and the Financial Assistance Corporation; and

(4) the term "unsafe or unsound practice" shall—

(A) have the meaning given to it by the Farm Credit Administration by regulation, rule, or order; [and]

(B) during the period beginning on the date of the enactment of this paragraph and ending December 31, 1992, mean any noncompliance by a System institution, as determined by the Farm Credit Administration in consultation with the Assistance Board, with any term or condition imposed on the institution by the Assistance Board under section 6.6[.]; *and*

(C) after December 31, 1992, mean any significant noncompliance by a System institution (as determined by the Farm Credit Administration, in consultation with the Farm Credit System Insurance Corporation) with any term or condition imposed on the institution by the Farm Credit System Assistance Board under section 6.6 or by the Farm Credit System Insurance Corporation under section 5.61.

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PART E—FARM CREDIT SYSTEM INSURANCE CORPORATION

SEC. 5.51. DEFINITIONS. * * *

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Sec. 5.58. GENERAL CORPORATE POWERS.

On the date of the enactment of this part, the Corporation shall become a body corporate and as such shall have the following powers:

(1) SEAL.—The Corporation may adopt and use a corporate seal.

(2) SUCCESSION.—The Corporation may have succession until dissolved by an Act of Congress. *The Corporation shall succeed to the rights of the Farm Credit System Assistance Board under agreements between the Farm Credit System Assistance Board and System institutions certifying the institutions as eligible to issue preferred stock pursuant to title VI on the termination of the Assistance Board on the date provided in section 6.12.*

(3) CONTRACTS.—The Corporation may make contracts.

(4) LEGAL ACTIONS.—

(A) IN GENERAL.—The Corporation may sue and be sued, complain and defend, in any court of law or equity, State or Federal.

(B) JURISDICTION.—All suits of a civil nature at common law or in equity to which the Corporation shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy, and the Corporation, without bond or security, may remove any such action, suit, or proceeding from a State court to the United States district court for the district or division embracing the place where the same is pending by following any procedure for removal then in effect.

(C) ATTACHMENT AND EXECUTION.—No attachment or execution may be issued against the Corporation or its property before final judgment in any suit, action, or proceeding in any State, county, municipal, or United States court.

(D) AGENT FOR SERVICE OF PROCESS.—The Board of Directors shall designate an agent on whom service of process may be made in any State or jurisdiction in which any insured System bank is located.

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TITLE III—CAPITAL REQUIREMENTS AND SUPERVISION OF THE FEDERAL AGRICULTURAL MORTGAGE CORPORATION

FARM CREDIT ACT OF 1971

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TITLE VIII—AGRICULTURAL MORTGAGE SECONDARY MARKET

SEC. 8.0. DEFINITIONS. * * *

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SEC. 8.10. FUNDING FOR GUARANTEE; RESERVES OF CORPORATION; *CAPITAL POLICY*.

(a) GUARANTEE.—The Corporation shall provide guarantees for securities representing interests in, or obligations backed by, pools of qualified loans through commitments issued by the Corporation providing for guarantees.

(b) GUARANTEE FEES.—

(1) INITIAL FEE.—At the time a guarantee is issued by the Corporation, the Corporation shall assess the certified facility a fee of not more than ½ of 1 percent of the initial principal amount of each pool of qualified loans.

(2) ANNUAL FEES.—Beginning in the second year after the date the guarantee is issued under paragraph (1), the Corporation may, at the end of each year, assess the certified facility an annual fee of not more than ½ of 1 percent of the principal amount of the loans then constituting the pool.

(3) DETERMINATION OF AMOUNT.—The Corporation shall establish such fees on the amount of risk incurred by the Corporation in providing the guarantees with respect to which such fee is assessed, as determined by the Corporation. Fees assessed under paragraphs (1) and (2) shall be established on an actuarially sound basis.

(4) ANNUAL REVIEW BY GAO.—the Comptroller General of the United States shall annually review, and submit to the Congress a report regarding, the actuarial soundness and reasonableness of the fees established by the Corporation under this subsection.

(c) CORPORATION RESERVE AGAINST GUARANTEES LOSSES REQUIRED.—

(1) IN GENERAL.—So much of the fees assessed under this section as the Board determines to be necessary shall be set aside by the Corporation in a segregated account as a reserve against losses arising out of the guarantee activities of the Corporation.

(2) EXHAUSTION OF RESERVE REQUIRED.—The Corporation may not issue obligations to the Secretary of the Treasury under section 8.13 in order to meet the obligations of the Corporation with respect to any guarantees provided under this title until the reserve established under paragraph (1) has been exhausted.

(d) FEES TO COVER ADMINISTRATIVE COSTS AUTHORIZED.—The Corporation may impose charges or fees in reasonable amounts in connection with the administration of its activities under this title to recover its costs for performing such administration.

(e) CAPITAL POLICY.—

(1) IN GENERAL.—The Board of Directors of the Corporation shall establish the capital policy of the Corporation, including a determination of the levels of capital, which shall be not less than the levels specified in paragraph (3), required to be retained against guaranteed securities and investments of the Corporation based on the risks and amount of business of the Corporation.

"(2) CAPITAL.—As used in this title, the term 'capital' means the total stockholders' equity and the reserves of the Corporation as required under subsection (c).

(3) ADEQUATE CAPITAL.—For purposes of this title, the adequate capital level for the Corporation shall be the sum of—

(A) an amount of capital equal to at least 0.5 percent of the total outstanding principal amount of guaranteed securities backed by pools of qualified loans, whether owned by the Corporation or not;

(B) an amount of capital equal to at least 1.5 percent of the total on-balance sheet assets of the Corporation, other than those specified in subparagraph (A), issued or guaranteed by an agency or instrumentality of the United States Government; and

(C) an amount of capital equal to at least 2.5 percent of the total on-balance sheets assets of the Corporation, other than those specified in subparagraphs (A) and (B).

(4) CRITICAL CAPITAL.—For purposes of this title, the critical capital level for the Corporation shall be the sum of—

(A) an amount of capital equal to at least 0.2 percent of the total outstanding principal amount of guaranteed securities backed by pools of qualified loans, whether owned by the Corporation or not;

(B) an amount of capital equal to at least 0.5 percent of the total on-balance sheet assets of the Corporation, other than those specified in subparagraph (A), issued or guaranteed by an agency or instrumentality of the United States Government; and

(C) an amount of capital equal to at least 0.75 percent of the total on-balance sheet assets of the Corporation, other than those specified in subparagraphs (A) and (B).

(5) EXCLUSIONS.—Notwithstanding paragraphs (3) and (4), guaranteed securities backed by qualified loans described in section 8.0(9)(B) (loans guaranteed by the Secretary of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.)) and assets backed by a full faith and credit guarantee of the United States Government shall not be considered for purposes of calculating the capital requirements for the Corporation under this subsection.

(6) QUARTERLY DETERMINATION.—The Director of the Office of Secondary Market Oversight shall review and determine the capital position of the Corporation on not less than a quarterly basis. The first such determination shall be made for the quarter ending March 31, 1992.

(7) USE OF GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—For purposes of this subsection, on-balance sheet assets and off-balance sheet obligations shall be determined according to generally accepted accounting principles as adopted or recommended from time to time by the Financial Accounting Standard Board.

(f) ENFORCEMENT.—

(1) CAPITAL RESTORATION PLANS.—On any determination by the Director under subsection (e) that the amount of capital of the Corporation is less than the adequate capital level, the Farm Credit Administration Board (referred to in this title as the "FCA Board") shall provide written notice of the determination to Congress and to the Corporation and shall direct the Corporation to develop and submit a capital restoration plan as provided for in section 8.11.

(2) APPOINTMENT OF A CONSERVATOR.—

(A) NOTICE.—If, at any time, the Director determines that the amount of capital of the Corporation is less than the critical capital level established under subsection (e), the FCA Board shall provide written notice to Congress and to the Corporation that the capital of the Corporation is less than the critical capital level and that a conservator shall be appointed for the Corporation.

(B) APPOINTMENT.—Not later than 10 days following delivery of the notice to Congress and the Corporation, the FCA Board shall appoint a conservator for the Corporation.

(C) REPLACEMENT OF CONSERVATOR.—The FCA Board may, without notice or hearing, replace a conservator with another conservator. The replacement shall not affect the right of the Corporation to obtain judicial review of the decision of the FCA Board to appoint a conservator.

(D) TERMINATION.—

(i) DISCRETIONARY.—At any time the Board (in its sole discretion) determines that termination of a conservatorship is in the public interest and may safely be accomplished, the FCA Board may terminate the conservatorship and permit the Corporation to resume the transaction of its business subject to such terms, conditions, and limitations as the Board may prescribe.

(ii) MANDATORY.—The FCA Board shall terminate a conservatorship pursuant to this section or section 8.10

on a determination by the Director that the amount of capital of the Corporation equals or exceeds the adequate capital level for the Corporation established under Section 8.10.

(E) POWERS AND DUTIES.—

(i) GENERAL POWERS.—During a conservatorship, the conservator shall have all the powers of the shareholders, directors, and officers of the Corporation and may operate the Corporation in the name of the Corporation, unless the Board provides otherwise.

(ii) LIMITATIONS.—A conservator shall be subject to all rules, regulations, and orders issued from time to time by the FCA Board.

(iii) PAYMENT OF CREDITORS.—The FCA Board may require a conservator to set aside and make available for payment to creditors any amounts that it (in its sole discretion) determines may safely be used for such purpose. All creditors who are similarly situated shall be treated in a similar manner.

(F) COMPENSATION OF CONSERVATOR AND EMPLOYEES.—A conservator and professional employees (other than Federal employees) appointed to represent or assist the conservator may be compensated for activities conducted as conservator. Compensation may not be provided in amounts greater than the compensation paid to employees of the Federal Government for similar services, except that the FCA Board may provide for compensation at higher rates (but not in excess of rates prevailing in the private sector), if it determines that compensation at higher rates is necessary in order to recruit and retain competent personnel.

(G) EXPENSES.—All expenses of a conservatorship established pursuant to this section (including compensation) shall be paid by the Corporation and shall be secured by a lien on the Corporation, which shall have priority over any other lien.

(H) LIABILITY PROTECTIONS.—

(i) FEDERAL AGENCIES AND EMPLOYEES.—In any case in which the conservator is a Federal agency or an officer or employee of the Federal Government, chapters 161 and 171 of title 28, United States Code, shall apply with respect to the liability of the conservator for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship.

(ii) OTHER CONSERVATORS.—In any case in which the conservator is not a conservator described in clause, (i), the conservator shall not be liable for damages in tort or otherwise for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship, unless the acts or commissions constitute gross negligence, including any similar conduct or any form of intentional tortious conduct.

(iii) INDEMNIFICATION.—The FCA Board, with the approval of the Attorney General of the United States,

may indemnify the conservator on such terms as the Board considers appropriate.

(I) JUDICIAL REVIEW.—

(i) JURISDICTION.—

(I) FILING OF PETITION.—The Corporation may obtain review of the action of the Director or FCA Board to appoint a conservator by filing, within 10 days after receiving written notice of the appointment, a written petition requesting that the action of the Director or FCA Board be modified, terminated, or set aside.

(II) PLACE FOR FILING.—A petition filed pursuant to this subsection shall be filed in the United States Court of Appeals for the District of Columbia Circuit.

(ii) SCOPE OF REVIEW.—An action taken by the Director or FCA Board under this subsection may be modified, terminated, or set aside only if the court finds, on the record on which the Director or FCA Board acted, that the action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with an applicable law.

(iii) WITHDRAWAL OF JURISDICTION.—Except as provided in this subsection, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or effectiveness of any action of the Director or FCA Board under this subsection or to review, modify, suspend, terminate, or set aside the action.

SEC. 8.11. SUPERVISION, EXAMINATION, AND REPORT OF CONDITION.

(a) OFFICE OF SECONDARY MARKET OVERSIGHT.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this subsection, the FCA Board shall establish within the Farm Credit Administration the Office of Secondary Market Oversight (hereafter in this section referred to as the "Office") which shall be an independent division within the Farm Credit Administration with sole responsibility for carrying out the authority set forth in this section.

(2) ORGANIZATION.—

(A) MANAGEMENT BY DIRECTOR.—The Office shall be managed by a full-time Director who shall be selected by the members of the FCA Board.

(B) QUALIFICATIONS OF DIRECTOR.—

(i) IN GENERAL.—The Director shall be an individual knowledgeable about and experienced in the financial markets of the United States and the structure and operations of secondary market operations and entities, including secondary markets for mortgages.

(ii) INELIGIBILITY.—A person shall not be eligible to serve as the Director of the Office if the person has been a director, officer, or employee of any primary lending institution involved in providing agricultural credit, or of an agency responsible for the regulation of any such institution, or of the Corporation or any affil-

iate of the Corporation, at any time within the 5-year period immediately preceding the selection of the person to the position of Director.

(iii) REMOVAL.—*The FCA Board may remove the Director prior to the expiration of the term of the Director for cause.*

(C) TERM OF DIRECTOR.—*The Director shall be selected for fixed terms of 5 years. An individual serving as Director may serve successive terms.*

(D) EMPLOYEES.—

(i) FULL-TIME EMPLOYEES.—*The Office may consist of as many full-time employees, in addition to the Director, as the Director determines reasonably necessary to conduct examinations of the Corporation and to otherwise carry out the responsibilities of the Office.*

(ii) PART-TIME USE OF FCA EMPLOYEES.—*To the extent that examination of the Corporation does not require the full-time attention of one or more employees with the necessary training and qualifications to carry out the examinations, the Director may use, on a reimbursable and part-time basis, such other employees of the Farm Credit Administration with the necessary qualifications to conduct the examinations and to otherwise carry out the responsibilities of the Office, as are necessary pursuant to this section.*

(E) COMPENSATION AND BENEFITS.—*The provisions of this Act relating to compensation and benefits of the employees of the Farm Credit Administration shall apply to the Director and other employees, who shall be compensated at a rate commensurate with the directors and other employees of the other divisions of the Farm Credit Administration.*

(F) EXPENSES.—

(i) IN GENERAL.—*Subject to clause (ii), the Director may incur such expenses as are reasonable and necessary to carry out the functions and responsibilities of the Office. The Corporation shall reimburse the Farm Credit Administration for the expenses of the Office under subsection (h).*

(ii) EXPENSES LIMITATIONS.—*Expenses shall be limited to the actual expenses of the Office and may not exceed—*

(I) for fiscal year 1992, an amount equal to the greater of $250,000 or 0.02 percent of the average principal amount of guaranteed securities outstanding during the fiscal year;

(II) for fiscal year 1993, an amount equal to the greater of $300,000 or 0.02 percent of the average principal amount of guaranteed securities outstanding during the fiscal year; and

(III) for fiscal year 1994 and each succeeding fiscal year, an amount equal to the sum of 0.02 percent of the first $2.5 billion of the average principal amount of guaranteed securities, plus 0.01 percent of the total average principal amount of

guaranteed securities over $2.5 billion outstanding during the fiscal year.

(ii) ASSESSMENT LIMITATION.—In no event shall Farm Credit System institutions, other than the Corporation, be assessed for any expense of the Office nor any other expense that is attributable to supervision or examination of the Corporation.

(3) AUTHORITY OF THE DIRECTOR.—

(A) IN GENERAL.—Subject to subparagraph (C), the Director shall have the exclusive authority, subject to the FCA Board review of this subsection, to make such determinations and to take such actions, as may be authorized in this section and section 8.10, as are reasonable and necessary to carry out the responsibilities of the Office and to ensure the safe and sound operations of the Corporation, including—

(i) hiring and directing the employees of the Office and delegating responsibilities of the Office to the employees in the same manner and subject to the same terms and conditions as are applied to other employees of the Farm Credit Administration under paragraphs (2) and (3) of section 5.11(c);

(ii) examination of the condition of the Corporation and its affiliates;

(iii) review of the capital policy of the Corporation to determine whether the policy is in compliance with the minimum capital requirements of section 8.10(e); and

(iv) initiation of enforcement proceedings as provided for in subsection (b)(1)(B).

(B) REPORTING AND POLICIES.—

(i) REPORTING.—In carrying out the responsibilities of the Office, the Director shall report regularly to and receive guidance from the FCA Board on any matter under the jurisdiction of the Office.

(ii) POLICIES.—The Director shall be governed by such policies as are adopted by the FCA Board regarding the responsibilities of the Office to ensure the safe and sound operations of the Corporation, consistent with the purposes for which the Corporation was established.

(C) FCA BOARD REVIEW.—

(i) SUBMISSION TO FCA BOARD.—In carrying out the responsibilities described in clauses (ii), (iii) and (iv) of subparagraph (A), determinations of the Director shall be submitted to the FCA Board for review along with a written report and appropriate recommendations for action, before the determinations become final and effective.

(ii) FINAL IF NO REJECTION.—On the 31st day after the Director's written report is provided to the FCA Board for review, a recommendation of the Director shall become final and effective if the FCA Board has not taken action to reject the recommendation.

(iii) FINAL IF APPROVED.—The FCA Board may act to approve the recommendation of the Director at any

time during the review period, in which case the determination of the Director shall become final and effective at the time of the FCA Board action.

(iv) Rejection.—If the FCA Board rejects the recommendation of the Director, the FCA Board shall (not later than the last day of the review period provided for in this subparagraph)—

(I) prepare a written report setting forth the reasons for the rejection and instructions to the Director for reconsideration of the matter; and

(II) provide the report to the Director and the appropriate committees of Congress with jurisdiction over the Corporation.

(D) Limitations.—

(i) Basis for actions of director.—The determinations and other actions of the Director shall be based on facts and circumstances related to the safe and sound operation of the Corporation and shall not take into consideration or be made on the basis of the regulatory and other responsibilities of the Farm Credit Administration with regard to other System institutions.

(ii) Basis for review by board.—In carrying out its authority under this section, the FCA Board shall base its review of the Director's determinations and other actions on the facts and circumstances considered by the Director and not on the impact of the determinations on other System institutions.

(4) Vacancies.—A vacancy in the position of Director that occurs before the expiration of the term for which a Director was appointed shall be filled in the manner established for the selection of a Director in paragraph (2). The term of the Director appointed to fill a vacancy shall be for the remainder of the unexpired term.

(5) Service after end of term.—an individual may serve as Director of the Office after the expiration of the term for which selected until a successor Director has been selected.

[(a)] *(b)* Regulation.—

(1) Authority.—Notwithstanding any other provision of this Act, the [Farm Credit Administration] *Office* shall have the authority to—

(A) provide for the examination of the condition of the Corporation and its affiliates; and

(B) provide for the general supervision of the safe and sound performance of the powers, functions, and duties invested in the Corporation and its affiliates by this title, including through the use of the enforcement powers of the Farm Credit Administration under part C of title V.

(2) Considerations.—In exercising its authority pursuant to this section, the [Farm Credit Administration] *Office* shall consider—

(A) the purposes for which the Corporation was created;

(B) the practices appropriate to the conduct of secondary markets in agricultural loans; and

(C) the reduced levels of risk associated with appropriately structured secondary market transactions.

[(c)] *(d)* Examinations and Audits.—

(1) In general.—The financial transactions of the Corporation shall be examined by examiners of the [Farm Credit Administration] *Office* in accordance with the principles and procedures applicable to commercial corporate transactions under such rules and regulations as may be prescribed by the [Administration] *Office*.

(2) Frequency.—The examinations shall occur at such times as the Farm Credit Administration [Board] may determine, but in no event less than once each year.

(3) Access.—The examiners shall—

(A) have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audit; and

(B) be afforded full access for verifying transactions with certified facilities and other entities with whom the Corporation conducts transactions.

[(c)] *(d)* Annual Report of Condition.—The Corporation shall make and publish an annual report of condition as prescribed by the [Farm Credit Administration] *Office*. Each report shall contain financial statements prepared in accordance with generally accepted accounting principles and contain such additional information as the [Farm Credit Administration] *Office* may by regulation prescribe. The financial statements of the Corporation shall be audited by an independent public accountant.

[(d)] *(e)* FCA Assessments to Cover Costs.—The Farm Credit Administration shall assess the Corporation for the cost to the Administration of any regulatory activities conducted under this section, including the cost of any examination.

[(e)] *(f)* Definition of Affiliate.—As used in this title, the term "affiliate" shall mean an entity effectively controlled or owned by the Corporation, except that such term shall not include a certified facility or an originator (as defined in paragraphs (3) and (7), respectively, of section 8.0).

(g) Capital Restoration Plans.—

(1) Requirement.—The Corporation shall submit a capital restoration plan under this subsection whenever the Director determines that the amount of capital of the Corporation does not equal or exceed the adequate capital level established under section 8.10.

(2) Contents.—Each capital restoration plan submitted under this subsection shall set forth a feasible plan for the Corporation to promptly restore the amount of capital of the Corporation to an amount that is not less than the adequate capital level. Each capital restoration plan shall—

(A) specify the amount of capital the Corporation will achieve and maintain;

(B) describe the actions that the Corporation will take to restore the capital of the Corporation to an amount that is not less than the adequate capital level;

(C) establish a schedule for completing the capital restoration plan;

(D) specify the types and levels of activities in which the Corporation will engage during the term of the capital restoration plan; and

(E) describe the actions that the Corporation will take to comply with any requirements imposed under the plan.

(3) DEADLINES FOR SUBMISSION.—The Director shall establish a deadline for submission of a capital restoration plan, which may not be less than 30 days or more than 45 days after the Corporation is notified that a plan is required. The Director may extend the deadline to the extent that the Director determines necessary. Any extension of the deadline shall be in writing and for a time certain.

(4) APPROVAL.—The Director shall review each capital restoration plan submitted under this section and (with the approval of the FCA Board) approve or disapprove the plan. The Director shall notify the Corporation in writing of the approval or disapproval of any plan submitted (which shall include the reasons for any disapproval of the plan). The Director shall provide for modification, resubmission, and review of any plans disapproved.

TITLE IV—REPAYMENT OF FARM CREDIT SYSTEM DEBT OBLIGATIONS

FARM CREDIT ACT OF 1971

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TITLE VI—ASSISTANCE TO FARM CREDIT SYSTEM

SUBTITLE A—ASSISTANCE BOARD

SEC. 6.0. ESTABLISHMENT OF BOARD. * * *

* * * * * * *

SEC. 6.9. SUCCESSION.

(a) ASSETS AND LIABILITIES.—On the issuance by the Farm Credit Administration of the charter for the Assistance Board under this subtitle, the Assistance Board shall succeed to the assets of and assume all debts, obligations, contracts, and other liabilities of the Capital Corporation, matured or unmatured, accrued, absolute, contingent or otherwise, and whether or not reflected or reserved against on balance sheets, books of account, or records of the Capital Corporation.

(b) CONTRACTS.—The existing contractual obligations, security instruments, and title instruments of the Capital Corporation shall, by operation of law and without any further action by the Farm Credit Administration, the Capital Corporation, or any court, become and be converted into obligations, entitlements, and instruments of the Assistance Board chartered under this subtitle.

(c) ADJUSTMENT OF ASSESSMENTS.—Not later than 15 days after the issuance of the charter of the Assistance Board, the Board shall retire all debt and equity obligations issued to any System institution under section 4.28G(a)(14) or 4.28H (as in effect immediately before the date of the enactment of this title) at the book value of such obligations (determined as of such date of enactment) and shall pay such amounts to the holders of such debt and equity obligations.

(d) SURPLUS FUNDS.—To the extent that, on the extinguishing of liabilities assumed by the Assistance Board under this section, and on full performance or other final disposition of contract obligations of the Assistance Board, there remain surplus funds attributable to such obligations or contracts, the Assistance Board shall distribute such surplus funds among the System institutions that contributed funds to the Capital Corporation on the basis of the relative amount of funds so contributed by each institution.

(e) PRESERVATION AGREEMENTS.—

(1) TRANSFER OF OBLIGATIONS.—Notwithstanding any other provision of this Act or the terms and conditions of the Thirty-Seven Banks Capital Preservation Agreement, the Federal Land Banks Capital Preservation Agreement, the Federal Intermediate Credit Banks Capital Preservation Agreement, and the Banks for Cooperatives Loss Sharing Agreement—

(A) at the time the receiving bank receives funds from the Financial Assistance Corporation in an equal and equivalent amount in accordance with this subsection, any amounts received by, or that remain accrued to, any System bank in accordance with the activation by any such agreement for the calendar quarter ending on September 30, 1986, shall be—

(i) repaid to the contributing bank by the bank that received such payments; or

(ii) cancelled;

(B) on the date the Financial Assistance Corporation is chartered, the accounts payable of each contributing bank under such agreements for the calendar quarter ending on September 30, 1986, shall, by operation of law and without any further action by such contributing bank, any other bank, or any court, become and be converted into accounts payable of the Financial Assistance Corporation to each receiving bank under such agreement for such calendar quarter in the same amounts as previously carried on the books of each such receiving bank; and

(C) on the date the Financial Assistance Corporation is chartered, the accounts receivable of each receiving bank under such agreements for the calendar quarter ending September 30, 1986, shall, by operation of law and without any further action by such receiving bank or any other bank, or any court, become and be converted into accounts receivable in such receiving bank from the Financial Assistance Corporation, in the same amount as previously carried on the books of such receiving bank and such receivables shall, for all financial reporting purposes, be accounted for as an asset on the books of such receiving bank in accordance with generally accepted accounting practices.

(2)(A) Not later than 30 days after the first issuance of obligations by the Financial Assistance Corporation in accordance with section 6.26, the Corporation shall pay to each receiving bank such sums as are necessary to permit each receiving bank to repay, in accordance with paragraph (1), the amounts each such receiving bank received under any such agreement.

(B) The accruals shall be paid by the Corporation to each receiving bank for the actual net loan charge-offs recorded on the books of each such bank before January 1, 1993, not previously paid by the contributing banks.

(3) Debt obligations.—

(A) Issuance.—For the purpose of obtaining funds to carry out this subsection, the Financial Assistance Corporation shall issue debt obligations under section 6.26. Such obligations shall be subject to the terms and conditions of such section, except as provided for in this paragraph.

(B) Payment of interest.—During each year of the 15-year period of such obligation issued pursuant to subparagraph (A), the banks operating under this Act shall pay to the Financial Assistance Corporation, at such times as the Corporation shall determine, an amount equal to the entire amount of interest due on such obligation. Each bank shall pay a proportion of such interest equal to—

(i) the average accruing loan volume of the bank during the year preceding the year of such payment; divided by

(ii) the average accuring loan volume of all of the banks of the System for the same period.

[(C) Payment of principal.—After the end of the 15-year period beginning on the date of the issuance of any obligation issued to carry out this subsection, the banks operating under this Act shall pay to the Financial Assistance Corporation, on demand, an amount equal to the outstanding principal of such obligation. Each bank shall pay a proportion of such principal equal to—

[(i) the average accruing loan volume of the bank for the preceding 15 years; divided by

[(ii) the average accruing loan volume of all banks of the System for the same period.

[(D) Until each obligation issued in accordance with this subsection reaches maturity, for all financial reporting purposes, such obligation shall be considered to be the sole obligation of the Financial Assistance Corporation and shall not be considered a liability of any System bank.]

(C) Payment of principal.—

(i) In general.—After the end of the 15-year period beginning on the date of the issuance of any obligation under this subsection, the banks operating under this Act shall pay to the Financial Assistance Corporation, on demand, an amount equal to the outstanding principal of the obligation. Each bank shall pay a proportion of the principal equal to—

(I) the average accruing loan volume of the bank for the preceding 15 years; divided by

(II) the average accruing loan volume of all banks of the System for the same period.

(ii) Liability for banks terminating System status.—A bank terminating System status pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation, the present value of such estimated future payment as would have been due had the bank remained in the System. A liability to the Financial Assistance Corporation for the amount shall be recognized as a claim in favor of the Financial Assistance Corporation against the bank.

(iii) Liability for banks undergoing liquidation.—If a bank is undergoing liquidation under section 4.12, a liability to the Financial Assistance Corporation, calculated under clause (ii) as if the bank had terminated System status on the date it was placed in liquidation, shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of the bank.

(iv) No anticipatory reductions in other obligations.—The obligations of other banks shall not be reduced, in any year from the amount determined under subparagraph (D), in anticipation of any such recoveries from banks terminating System status or that are in liquidation, except that the Financial Assistance Corporation shall—

(I) apply the recoveries and all earnings on the recoveries, to reduce the other banks' subsequent payment obligations proportionately; or

(II) to the extent the recoveries exceed the amount necessary to reduce the other banks' subsequent payment obligations to zero (or if the other banks have no subsequent payment obligations), refund the recoveries when received, to the other banks in proportion to the other banks' payments received by the Financial Assistance Corporation under this subparagraph and subparagraph (D) prior to the recovery.

(D) Annual payments.—

(i) In general.—In order to provide for the orderly funding and discharge over time of the obligation of each System bank to the Financial Assistance Corporation under subparagraph (C), each System bank shall enter into or continue in effect an agreement with the Financial Assistance Corporation under which—

(I) the bank will make annual payments to the Financial Assistance Corporation, beginning no later than December 31, 1991 (except as provided in clause (ii)) in amounts designed to accumulate, in total, including earnings thereon, the obligation; and

(II) the Financial Assistance Corporation will partially discharge the bank from its obligation

under subparagraph (C) to the extent of each such payment and the earnings on the payment.

(ii) D*EADLINE FOR CERTAIN BANKS.—In the case of a bank that did not meet its interim capital requirement on December 31, 1990, the bank shall begin making payments under clause (i) no later than December 31, 1993.*

(iii) P*ERMANENT CAPITAL REQUIREMENTS.—The agreement shall not require payments to be made to the extent that making a particular payment or part of a payment would cause a bank to fail to satisfy applicable regulatory permanent capital requirements, but shall provide for recalculation of subsequent payments accordingly to ensure that the total of the bank's payments, plus earnings, are sufficient to discharge its obligations.*

(iv) I*NVESTMENT OF FUNDS.—The funds received by the Financial Assistance Corporation pursuant to agreements under this subparagraph shall be invested in eligible investments (as defined in section 6.25(a)(1)). The funds and the earnings on the funds shall be available only for the payment of the principal of the bonds issued by the Financial Assistance Corporation under this subsection.*

(E) F*INANCIAL REPORTING.—Until each obligation issued in accordance with this subsection reaches maturity, for all financial reporting purposes—*

(i) the obligation shall be considered to be the sole obligation of the Financial Assistance Corporation and shall not be considered a liability of any System bank; and

(ii) an obligation to make future annuity payments to the Financial Assistance Corporation under subparagraph (D) shall not be considered a liability of any System bank.

(4) FUNDS NOT CONSIDERED FINANCIAL ASSISTANCE.—The funds made available to each bank, whether through the issuance of stock or otherwise, by the Financial Assistance Corporation to meet obligations under any agreement referred to in paragraph (1) or to meet any obligations of the contributing banks under any such agreement, as required by this subsection, shall not be considered financial assistance under this Act.

(5) SUSPENSION OF PRESERVATION AGREEMENTS.—During the 5-year period beginning on the date of enactment of this subsection and thereafter whenever funds from the Farm Credit System Insurance Fund are available for use in assisting System institutions to meet their obligations on their debt instruments, activation of the Thirty-Seven Banks Capital Preservation Agreement, the Federal Land Banks Capital Preservation Agreement, the Federal Intermediate Credit Banks Capital Preservation Agreement, and the Banks for Cooperatives Loss Sharing Agreement shall be suspended, in exchange for the benefits flowing to the signatories to such agreements under the Agricultural Credit Act of 1987.

(f) ADMINISTRATION.—This section shall be subject to paragraphs (2) and (3) of section 6.26(e).

* * * * * * *

SUBTITLE B—FINANCIAL ASSISTANCE CORPORATION

SEC. 6.20. ESTABLISHMENT OF CORPORATION.

Not later than 5 days after the date of the enactment of this title, the Farm Credit Administration shall charter the Farm Credit System Financial Assistance Corporation (hereinafter referred to in this Act as the "Financial Assistance Corporation") which shall be—

(1) an institution of the Farm Credit System; and

(2) a Federally chartered instrumentality of the United States.

SEC. 6.21. PURPOSE.

The purpose of the Financial Assistance Corporation shall be to carry out a program to provide capital to institutions of the Farm Credit System that are experiencing financial difficulty *and to assist, pursuant to section 6.9(e) and subsections (c) through (g) of section 6.26, in the repayment by System institutions to those who provided funds in connection with the program.*

* * * * * * *

SEC. 6.26. DEBT OBLIGATIONS.

(a) ISSUANCE.—During the period beginning 61 days after the date of the enactment of this title and ending September 30, 1992, the Financial Assistance Corporation, subject to the approval of the Assistance Board, may issue uncollateralized bonds, notes, debentures, and similar obligations, guaranteed as to the timely payment of principal and interest by the Secretary of the Treasury as set forth in subsection (d) of this section, with semiannual interest coupon payments and a maturity period of 15 years—

(1) in an aggregate amount not to exceed $2,800,000,000; and

(2) beginning January 1, 1989, in an additional amount, not to exceed $1,200,000,000, if—

(A) debt obligations have been issued by the Corporation to the full extent authorized under paragraph (1);

(B) the Assistance Board determines that such additional funds are needed to carry out this title; and

(C) at least 90 days before the issuance of any debt obligations under this paragraph, the Assistance Board submits a report to Congress that sets forth the determination of the Assistance Board that such additional debt obligations should be issued, and that contains a detailed evaluation supporting the determination.

(b) CONDITIONS.—The debt obligations shall be in such forms and denominations, bear such rates of interest, be subject to such conditions, be issued in such manner, and be sold at such prices as may be prescribed by the Financial Assistance Corporation.

(c) INTEREST PAYMENTS.—

(1) PAYMENT OF INTEREST DURING FIRST 5-YEAR PERIOD.—During each year of the first 5-year period of the 10-year

period beginning on the date of issuance of each obligation under subsection (a) of this section, the Financial Assistance Corporation shall pay, without recourse to System institutions, other than that described in paragraph (5), all of the interest due on such obligation.

(2) PAYMENT OF INTEREST DURING SECOND 5-YEAR PERIOD.—

(A) IN GENERAL.—During each year of the second 5-year period of the 10-year period beginning on the date of issuance of each obligation under subsection (a) of this section, the Financial Assistance Corporation shall pay all of the interest due on such obligation.

(B) PAYMENT BY SYSTEM [INSTITUTIONS] *BANKS TO FINANCIAL ASSISTANCE CORPORATION.*—During each year of the second 5-year period, System [institutions] *banks* shall pay to the Financial Assistance Corporation 50 percent of the interest due on the obligations except that System [institutions] *banks* shall pay an additional 10 percent of the interest expense for each 1 percent that the unallocated retained earnings of the System (as determined under generally accepted accounting principles exceed 5 percent of net assets (total assets less allowance for loan losses) based on a year-end financial statement for the preceding year.

[(c) ALLOCATION.—During each year of the second 5-year period, each System institution shall pay to the Financial Assistance Corporation a proportion of the interest due from System institutions under this paragraph equal to—

[(i) the amount of the performing loan volume of the institution (based on the average loan volume for the preceding year); divided by

[(ii) the total performing loan volume of the System for the preceding year.]

(C) ALLOCATION.—During each year of the second 5-year period, each system bank shall pay to the Financial Assistance Corporation a proportion, as calculated by the Financial Assistance Corporation, of the interest due from System banks under this paragraph equal to—

(i) the amount of the average accruing retail loan volume of the bank and its affiliated associations for the preceding year; divided by

(ii) the total average accruing retail loan volume of all such banks and their affiliated associations for the preceding year.";

(C) in paragraph (2), by striking subparagraph (D); and

(D) in paragraphs (3) and (4), by striking "institutions" each place it appears and inserting "banks"; and

(2) by adding at the end the following new subsection:

(e) ADMINISTRATION.—

(1) DEFINITION OF RETAIL LOAN VOLUME.—As used in this section, the term 'retail loan volume' means all loans (as defined in accordance with generally accepted accounting principles) by a System bank or association, excluding loans by the bank or association to another system institution.

(2) CALCULATION OF AVERAGE ANNUAL LOAN VOLUMES.—For purposes of this section and section 6.9, average annual loan volumes shall be calculated using month-end balances.

(3) EXCLUSION OF BANKS UNDERGOING LIQUIDATION.—For purposes of this section and section 6.9, the term 'bank' shall not include a bank that had entered liquidation prior to the date of enactment of this subsection.

(D) SPECIAL RULE.—For purposes of determining the average loan volume of Farm Credit Banks, loan volume shall consist of loans made by such banks with the exception of loans made to associations.

(3) PAYMENTS BY TREASURY.—The Secretary of the Treasury, in accordance with section 6.28, shall pay to the Financial Assistance Corporation, in a timely manner, the balance of each interest payment not made by the system institutions.

(4) PAYMENT OF INTEREST AFTER FIRST 10-YEAR PERIOD.—During each year of the third 5-year period of the 15-year period beginning on the date of the issuance of each obligation under subsection (a) of this section, the Financial Assistance Corporation shall pay all of the interest due on such obligation. During each year of such 5-year period, System institutions shall pay the entire amount of interest due on the obligation allocated in the same manner as under paragraph (2)(C). Such payments shall be made to the Financial Assistance Corporation at such times as the Financial Assistance Corporation shall determine.

[(5) REPAYMENT BY SYSTEM INSTITUTIONS.—

[(A) IN GENERAL.—Subject to the other provisions of this paragraph, the institutions of the Farm Credit System shall, on a fair and equitable basis, repay to the Secretary of the Treasury the total amount of any annual interest charges on debt obligations issued under subsection (a) of this section that such institutions have not previously paid, and such institutions shall not be required to pay any additional interest charges on such payments.

[(B) TIME OF PAYMENT.—The institutions of the Farm Credit System shall begin making payments under this paragraph when the Farm Credit Administration, in consultation with the Secretary of the Treasury, determines that such institutions possess the financial viability to make such payments, except that such institutions shall not be required to begin making such payments until the obligations referred to in subsection (d)(1)(E) have been fully repaid.

[(C) TERMS OF PAYMENTS.—

[(i) IN GENERAL.—The institutions of the Farm Credit System shall make payments under this paragraph at such levels, and on such dates, as the Farm Credit Administration determines appropriate, except that the Farm Credit Administration shall not set payment levels or dates that would jeopardize the financial viability of any such institution.

[(ii) LIMITATIONS.—The institutions of the Farm Credit system shall not be required to make such repayments in a manner that—

[(I) impairs the stock of such institution; or

[(II) jeopardizes the minimum capital requirements of the institution.

[(iii) UNCOLLATERALIZED OBLIGATION.—Obligations to make repayments under this paragraph shall not be required to be collateralized.]

(5) REPAYMENT OF TREASURY-PAID INTEREST.—

(A) IN GENERAL.—On the maturity date of the last-maturing debt obligation issued under subsection (a), the Financial Assistance Corporation shall repay to the Secretary of the Treasury the total amount of all annual interest charges on the debt obligations that Farm Credit System institutions (other than the Financial Assistance Corporation) have not previously paid. The Financial Assistance Corporation shall not be required to pay any additional interest charges on the payments.

(B) ASSESSMENT.—In order to provide for the orderly funding by the banks of the System of the repayment by the Financial Assistance Corporation to the Secretary of the Treasury, the Financial Assistance Corporation shall assess each System bank on or about July 1 of each year beginning in 1992, and each System bank shall promptly pay to the Financial Assistance Corporation, an annual amount equal to .0004 times the bank's and its affiliated associations' average accruing retail loan volume for the preceding year, subject to—

(i) upward or downward adjustment, as appropriate, by the Financial Assistance Corporation during each of the last 5 years prior to the date the Financial Assistance Corporation is obligated to make the repayment, in order to ensure that the Financial Assistance Corporation will have the amount of funds needed to make the repayment on the due date; and

(ii) reduction or termination in any year when the funds paid to the Financial Assistance Corporation, including any anticipated future earnings on the funds, are sufficient to make the repayment on the due date.

(C) INVESTMENT OF FUNDS.—The Financial Assistance Corporation shall invest funds derived from the assessment in eligible investments (as defined in section 6.25(a)(1)). The funds and the earnings on the funds shall be available only for the repayment to the Secretary of the Treasury provided for in subparagraph (A).

(D) PASS THROUGH.—A bank may (and, to the extent necessary to satisfy its obligations, shall) pass on (either directly, or indirectly through loan pricing or otherwise) all or part of the assessments to its affiliated direct lender associations based on proportionate average accruing retail loan volumes for the preceding year, but the bank shall remain primarily liable for the amounts.

(E) LIABILITY.—

(i) BANKS TERMINATING SYSTEM STATUS.—A bank terminating System status pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corpo-

ration, the present value of such estimated future assessments as would have been due had the bank remained in the System. A liability to the Financial Assistance Corporation in the amount shall be recognized as a claim in favor of the Financial Assistance Corporation against the bank.

(ii) BANKS UNDERGOING LIQUIDATION.—If a bank is undergoing liquidation under section 4.12, a liability to the Financial Assistance Corporation, calculated under clause (i) as if the bank had terminated System status on the date it was placed in liquidation, shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of the bank.

(iii) NO ANTICIPATORY REDUCTIONS IN OTHER OBLIGATIONS.—The obligations of other banks shall not be reduced in anticipation of any such recoveries from banks leaving the System or in liquidation.

(iv) REFUND OF RECOVERIES.—The Financial Assistance Corporation shall refund the recoveries, when received, to the other banks in proportion to the other banks' payments received by the Financial Assistance Corporation under this subparagraph prior to the recovery. If the recoveries exceed the payments received from the other banks prior to that time, the Financial Assistance Corporation shall apply the excess, and all earnings on the excess, to reduce the other banks' subsequent payment obligations proportionately.

(F) FUTURE PAYMENTS.—

(i) ASSOCIATIONS TERMINATING SYSTEM STATUS.—An association terminating System status pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to its supervising bank a share, based on the association's retail loan volume relative to the retail loan volume of the bank and its affiliated associations had the association remained in the System, of the present value of such estimated future assessments as would have been due had the association remained in the System. A liability to the bank in the amount shall be recognized as a claim in favor of the bank against the association.

(ii) ASSOCIATIONS UNDERGOING LIQUIDATION.—If an association is undergoing liquidation under this Act, a liability to the association's supervising bank, calculated under clause (i) as if the association had left the System on the date it was placed in liquidation, shall be recognized as a claim in favor of the association's supervising bank against the estate of the association.

(G) CAPITAL REQUIREMENTS.—Until the Financial Assistance Corporation has repaid the Secretary of the Treasury pursuant to subparagraph (A), all assessments paid by banks to the Financial Assistance Corporation pursuant to subparagraph (B), and any part of the obligation to pay future assessments to the Financial Assistance Corporation under subparagraph (B) that is recognized as an expense on

the books of any System bank or association, shall nonetheless be included in the capital of the bank or association for purposes of determining its compliance with regulatory capital requirements.

(d) Refinancing and Payment of Principal; Defaults.—

(1) In general.—

(A) Time of repayment.—On maturity of an obligation issued under subsection (a) of this section, the obligation shall be repaid by the Financial Assistance Corporation.

(B) Payments by institutions.—Except as provided in subparagraph [(C)]*(D)*, in order to enable the Financial Assistance Corporation to repay the obligation referred to in subparagraph (A), each institution that issued preferred stock under section 6.27(a) with respect to such obligation (or the successor thereto) shall pay to the Financial Assistance Corporation, before the maturity date of such obligation, an amount equal to the par value of such stock outstanding for such institution.

(C) Unallocated surplus accounts for preferred stock.—

(i) In general.—Effective beginning with calendar year 1992, as soon as practicable following the end of each prior year, except as provided in clause (ii), each such institution (other than an institution in receivership) shall appropriate from its earnings in the prior year to an unallocated surplus account for preferred stock an amount equal to—

(I) the greater of—

(aa) such amount as the institution may be required to appropriate under any assistance agreement it has with the Farm Credit System Assistance Board or the Farm Credit System Insurance Corporation; or

(bb) the amount that, if appropriated to the account in equal amounts in each year thereafter until the maturity of the obligation referred to in subparagraph (A), would cause the amount in the account to equal the par value of the preferred stock issued by the institution with respect to the obligation; plus

(II) any amount that had been appropriated to the account in a previous year but had thereafter been offset by losses.

(ii) Limitation.—An annual appropriation less than or equal to the institution's net income (as determined pursuant to generally accepted accounting principles) shall be made pursuant to this subparagraph, except that any amount of such appropriation calculated under clause (i) that exceeds the institution's net income shall not be appropriated, nor shall an appropriation be made that would cause the institution's preferred stock to be impaired.

(iii) Nonavailability for dividends.—The amount in such appropriated unallocated surplus account shall be

unavailable to pay dividends or other allocations or distributions to shareholders or holders of participation certificates.

(iv) OPERATING LOSSES.—The account shall be senior to all other unallocated surplus accounts but junior to all preferred and common stock for purposes of the application of operating losses.

(v) PERMANENT CAPITAL REQUIREMENTS.—The appropriations of surplus by an institution shall not affect the treatment of its preferred stock (and of the appropriated unallocated surplus) as equity for purposes of regulatory permanent capital requirements.

[(C) SYSTEMWIDE REPAYMENT.—In order to enable the Financial Assistance Corporation to repay the obligations issued to provide assistance under section 410(c) of the Agricultural Credit Act of 1987 and section 4.9A of this Act, or issued to provide funds to cover the expenses of the Assistance Board under section 6.7(a) of this Act, each System institution shall pay to the Financial Assistance Corporation a proportion of such obligation equal to—

[(i) the average performing loan volume of the institution for the preceding 15 years; divided by

[(ii) the average performing loan volume of all of the System institutions for the same period.

[(D) SPECIAL RULE.—For purposes of determining the average loan volume of Farm Credit Banks, loan volume shall consist of loans made by such banks with the exception of loans made to associations.]

(D) SYSTEM-WIDE REPAYMENT.—

(i) IN GENERAL.—In order to enable the Financial Assistance Corporation to repay the obligations issued to provide assistance under section 410(c) of the Agricultural Credit Act of 1987 (12 U.S.C. 2011 note) and section 4.9A(c) of this Act, or issued to provide funds to cover the expenses of the Assistance Board or the Financial Assistance Corporation under sections 6.7(a) and 6.24, respectively, each System bank shall pay to the Financial Assistance Corporation a proportion, as calculated by the Financial Assistance Corporation, of the obligation equal to—

(I) the average accruing retail loan volume of the bank and its affiliated associations for the preceding 15 years; divided by

(II) the average accruing retail loan volume of all such banks and their affiliated associations for the same period.

(ii) INCREASE IN PRESENT VALUE OF ESTIMATED OBLIGATIONS.—The annual increase in the present value of the estimated obligation of each bank to the Financial Assistance Corporation under this subparagraph shall be recorded each year as an expense item, in accordance with generally accepted accounting principles, on the books of the bank. A bank may (and, to the extent necessary to satisfy its obligations, shall) pass on (either

directly, or indirectly through loan pricing or otherwise) all or part of the payment requirement to its affiliated direct lender associations based on proportionate average accruing retail loan volumes for the preceding 15 years, but the bank shall remain primarily liable for the amount.

(iii) LIABILITY.—

(I) BANKS TERMINATING SYSTEM STATUS.—A bank terminating System status pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the present value of such estimated future payment as would have been due had the bank remained in the System. A liability to the Financial Assistance Corporation for the amount shall be recognized as a claim in favor of the Financial Assistance Corporation against the bank.

(II) BANKS UNDERGOING LIQUIDATION.—If a bank is undergoing liquidation under section 4.12, a liability to the Financial Assistance Corporation, calculated under subclause (I) as if the bank had terminated System status on the date it was placed in liquidation, shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of the bank.

(III) NO ANTICIPATORY REDUCTIONS IN OTHER OBLIGATIONS.—The obligations of other banks shall not be reduced in anticipation of any such recoveries from banks terminating System status or that are in liquidation, except that the Financial Assistance Corporation shall—

(aa) apply the recoveries and all earnings on the recoveries, to reduce the other banks' subsequent payment obligations proportionately; or

(bb) to the extent the recoveries exceed the amount necessary to reduce the other banks' subsequent payment obligations to zero (or if the other banks have no subsequent payment obligation), refund the recoveries when received, to the other banks in proportion to the other banks' payments received by the Financial Corporation under this subparagraph prior to the recovery.

(iv) FUTURE PAYMENTS.—

(I) ASSOCIATIONS TERMINATING SYSTEM STATUS.—An association terminating System status pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to its supervising bank a share, based on the association's retail loan volume relative to the retail loan volume of the bank and its affiliated associations had the association remained in the System, of the present value of the estimated future payment. A

liability to the bank in the amount shall be recognized as a claim in favor of the bank against the association.

(II) ASSOCIATIONS UNDERGOING LIQUIDATION.—If an association is undergoing liquidation under section 4.12, a liability to the association's supervising bank, calculated under subclause (I) as if the association had left the System on the date it was placed in liquidation, shall be recognized as a claim in favor of the association's supervising bank against the estate of the association.

(E) FUNDS FOR PAYMENTS.—Payments under subparagraphs [(B) and (C)] *(B), (C), and (D)* shall be made by each such institution from the funds of the institution or from funds raised by the institution through the issuance of debt obligations, which may be issued without a collateral requirement and without any guarantee by the Secretary of the Treasury.

(2) REFINANCED OBLIGATIONS.—The refinanced obligations issued under paragraph (1) shall be solely the obligations of the institutions refinancing such, and sections 4.3 and 4.4 shall not apply to such obligations.

(3) DEFAULTS.—

(A) [Interest] *CERTAIN PRINCIPAL AND INTEREST OBLIGATIONS.—*

(i) PAYMENT BY CORPORATION.—If a System [institution] *bank* defaults on the payment of interest due under subsection (c) of this section during the first 15 years after an obligation is issued under subsection (a) of this section, *on the payment of principal or interest due under subparagraphs (B) and (C) of section 6.9(e)(3), on the payment of principal due under paragraph (1)(C), or on the payment of an assessment due under subsection (c)(5)(B)* the Financial Assistance Corporation shall pay the amount [of the interest] due by the System [institution] *bank* out of the Trust Fund, and shall recover the amount [of the interest] due from the defaulting System [institution,] *bank* and such amount shall be paid to the Trust Fund.

(ii) PAYMENT BY INSURANCE FUND.—If the Financial Assistance Corporation has not recovered the full amount [of interest] due from a defaulting [institution] *bank* by the end of the 12-month period beginning on the date of default, [such uncollected interest] *any uncollected amount* shall be paid to the Trust Fund from the Insurance Fund established under section 5.60, to the full extent of funds available in the Insurance Fund as of the date the Financial Assistance Corporation notified the Farm Credit System Insurance Corporation of amounts due under this section.

(iii) PAYMENT BY REMAINING INSTITUTIONS.—To the extent that the payment from the Insurance Fund is insufficient to reimburse the Trust Fund, the remaining balance shall be [added to the amount of interest due from remaining System institutions, under subsection (c) of this section, and each remaining System institution, subject to the special rule provided in subsection (c)(2)(D) of this section, shall pay to the Trust Fund a proportion of the uncollected interest equal to—

[(I) the amount of the performing loan volume of the institution (based on the average loan volume for the preceding year); divided by

[(II) the total performing loan volume of the system.] *allocated to other System banks in accordance with the allocation mechanism applicable under this Act to the particular defaulted obligation.*

(B) [PRINCIPAL] *PRINCIPAL OF BONDS ISSUED TO FUND PURCHASE OF PREFERRED STOCK.*—

(i) EVALUATION.—Not later than 90 days before the maturity of any obligation issued under subsection (a) of this section, the Farm Credit Administration shall complete an evaluation of the general financial condition of each System institution that issued preferred stock under section 6.27(a) with respect to such obligation to determine whether such System institution will be able to redeem such stock at par value on the maturity of the obligation, and remain a viable institution capable of providing credit to eligible borrowers at equitable and competitive interest rates.

(ii) AVAILABILITY OF EVALUATION.—A copy of the evaluation required under clause (i) shall be furnished to the Secretary of the Treasury and the appropriate committees of Congress.

(iii) REDEMPTION BY INSTITUTION: PURCHASE BY SECRETARY OF THE TREASURY.—If the Farm Credit Administration determines, in consultation with the Secretary of the Treasury, on the basis of the evaluation required under clause (i), that the redemption of such stock at par value would impair the other stock or equities of such institution or render such institution incapable of meeting its capital adequacy standards, the institution shall be prohibited from redeeming the preferred stock it issued under section 6.27 with respect to the maturing obligation. If the Farm Credit Administration determines, in consultation with the Secretary of the Treasury, on the basis of the evaluation required under clause (i), that such institution will be able to redeem, in a timely manner and at par value, the preferred stock it issued under section 6.27 with respect to the maturing obligation, and remain a viable and competitive institution, such institution shall have the option of redeeming or not redeeming such stock. If such institution is prohibited from redeeming or elects not to redeem such stock, the Financial Assistance Corporation shall withdraw funds from the Trust Fund in an amount equal to the par value of the preferred stock issued by such institution under section 6.27 so as to enable the Financial Assistance Corporation to pay the principal of the maturing obligation. Simultaneously with such withdrawal of funds from the Trust Fund, the Financial Assistance Corporation shall transfer to the Insurance Fund an equal amount, at par value, of preferred stock of such institution. To the extent that the Trust Fund is insufficient to enable the Financial Assistance Corporation to pay the full principal of the maturing obligation, the Insurance Fund shall be used by the Farm Credit System Insurance Corporation to purchase, at par value, the preferred stock issued by such institution under section 6.27(a) to enable the Financial Assistance Corporation to pay the principal of the maturing obligation. To the extent that the Insurance Fund is insufficient to enable the Financial Assistance Corporation to pay the full principal of the maturing obligation, the Secretary of the Treasury shall purchase, at par value, the remaining quantity of the preferred stock issued by such institution to enable the Financial Assistance Corporation to make such full payment. For that purpose, the Secretary of Treasury may use, as a public debt transaction, the proceeds from the sale of any securities issued under chapter 31 of Title 31, United States Code. The purposes for which such securities may be issued under such chapter are extended to include such purchases of stock. Any preferred stock transferred to, or purchased by the Farm Credit System Insurance Corporation under this clause shall be retired by the issuing institution at such times and under such terms and conditions as are agreed to between the Insurance Corporation and such institution *to the extent that the redemption would impair the other stock or equities of the institution or render the institution incapable of meeting its capital adequacy standards.*

(C) RECOURSE BY OTHER SYSTEM [INSTITUTIONS] *BANKS*.—A defaulting [institition] *bank* shall be liable to the remaining System [institions] *bank* for [the amount of any interest] *any amounts* paid by the remaining [institutions] *bank* under this paragraph.

(D) RECOURSE BY FARM CREDIT SYSTEM INSURANCE CORPORATION.—A defaulting bank shall be liable to the Farm Credit System Insurance Corporation for the amount of any interest or principal paid by the Corporation under this paragraph.

(4) PAYMENT BY UNITED STATES.—

(A) INABILITY TO PAY.—Notwithstanding any other provision of this Act, if the Financial Assistance Corporation is unable to pay the principal or interest of any obligation issued under subsection (a) of this section *or section 6.9(e)(3)(A) after exhausting all funds in the Trust Fund,* the Secretary of the Treasury shall pay to the Financial Assistance Corporation the amount due which shall be used by the Financial Assistance Corporation to pay the obligation.

(B) RECOVERY.—

(i) [INTEREST PAYMENTS] *CERTAIN PRINCIPAL AND INTEREST OBLIGATIONS.*—In each instance in which the Secretary of the Treasury is required to make a payment under subparagraph (A) to the Financial Assistance Corporation as a result of a default made by a System [institution] *bank* on interest due from such System [institution] *bank* under subsection (c) of this section, *on the payment of principal or interest due under subparagraphs (B) and (C) of section 6.9(e)(3), on the payment of principal due under paragraph (1)(C), or on the payment of an assessment due under subsection (c)(5)(B),* the Secretary of the Treasury shall recover the amount of the payments the Secretary made, with respect to each defaulting [institution] *bank*, from such defaulting [institution] *bank*. If the Secretary has not recovered the full amount due from the defaulting [institution] *bank*. By the end of the 12-month period beginning on the date of payment by the Secretary, the uncollected amount shall be paid to the Secretary from the Insurance Fund established under section 5.60 *The defaulting bank shall be liable to the Farm Credit System Insurance Corporation for the amount paid to the Secretary from the Insurance Fund.*

(ii) [PRINCIPAL PAYMENTS] *PRINCIPAL OF BONDS ISSUED TO FUND PURCHASE OF PREFERRED STOCK.*—In each instance in which the Secretary of the Treasury is required under paragraph (3)(B)(iii) to purchase preferred stock issued by a System institution under section 6.27(a), the Farm Credit System Insurance Corporation shall use funds deposited in the Insurance Fund to repurchase, at par value, from the Secretary of the Treasury such stock required to be purchased under paragraph (3)(B)(iii) as funds become available for such repurchase.

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SEC. 6.31. TERMINATION.

(a) FINANCIAL ASSISTANCE CORPORATION.—The Financial Assistance Corporation and the authority provided to such Corporation by this subtitle shall terminate on *the complete discharge by the Financial Assistance Corporation of its responsibilities under section 6.9(e) and subsections (c) through (g) of section 6.26 with regard to repayments by System institutions, but in no event later than 2 years following* the maturity and full payment of all debt obligations issued under section 6.26(a).

(b) ACCOUNTS.—Simultaneously with the termination of the Financial Assistance Corporation as provided in subsection (a) of this section, any funds in the accounts established under section 6.25 shall be transferred to the Insurance Fund established under section 5.60.

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TITLE V—MISCELLANEOUS

FARM CREDIT ACT OF 1971

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TITLE II—FARM CREDIT ASSOCIATIONS

SUBTITLE A—PRODUCTION CREDIT ASSOCIATIONS

SEC. 2.0. ORGANIZATION AND CHARTERS. * * *

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SEC. 2.3. PRODUCTION CREDIT ASSOCIATION CAPITALIZATION.

(a) IN GENERAL.—In accordance with section 4.3A, each production credit association shall provide, through its bylaws and subject to Farm Credit Administration regulations, for its capitalization and the manner in which its stock shall be issued, held, transferred, and retired and, except as provided in subsection (b), its earnings distributed.

[(b) APPLICATION OF EARNINGS.—Each production credit association at the end of each fiscal year shall apply the amount of the earnings of the association for such year in excess of the operating expenses of the association (including provision for valuation reserves against loan assets in an amount equal to one-half of 1 percent of the loans outstanding at the end of the fiscal year to the extent that such earnings in such year in excess of other operating expenses permit, or in such greater amounts as are deemed necessary under generally accepted accounting principles, until such reserves equal or exceed 3½ percent of the loans outstanding at the end of the fiscal year, beyond which 3½ percent further additions to such reserves may be made, if deemed necessary under generally accepted accounting principles) first to the restoration of the impairment, if any, of capital, and second, to the establishment and maintenance of the surplus accounts, the minimum aggregate amount of which shall be prescribed by the Farm Credit Bank.]

(b) APPLICATION OF EARNINGS.—Each production credit association at the end of each fiscal year shall apply the amount of the earnings of the association for the year in excess of the operating expenses of the association (including provision for valuation reserves against loan assets in such amounts as are considered necessary under generally accepted accounting principles)—

(1) first to the restoration of the impairment, if any, of capital; and

(2) second, to the establishment and maintenance of the surplus accounts, the minimum aggregate amount of which shall be prescribed by the Farm Credit Bank.

(c) *Patronage.*—When the bylaws of an association so provide and subject to the general directions of the Farm Credit Administration, available net earnings at the end of any fiscal year may be distributed on a patronage basis in stock, participation certificates, or in cash. Any part of the earnings of the fiscal year in excess of the operating expenses for such year held in the surplus account may be allocated to patrons on a patronage basis.

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TITLE III—BANKS FOR COOPERATIVES

Part A—Banks for Cooperatives

SEC. 3.0. ESTABLISHMENT; TITLES; BRANCHES.

The banks for cooperatives established pursuant to sections 2 and 30 of the Farm Credit Act of 1933, as amended, shall continue as federally chartered instrumentalities of the United States. The Farm Credit Administration shall approve amendments consistent with this Act to charters and organizational certificates of banks for cooperatives. Unless an existing bank for cooperatives is merged with another bank, there shall be a bank for cooperatives in each farm credit district and a Central Bank for Cooperatives. A bank for cooperatives may include in its title the name of the city in which it is located or other geographical designation. The Central Bank for Cooperatives may be located in such place as its board of directors may determine with the approval of the Farm Credit Administration. When authorized by the Farm Credit Administration each bank for cooperatives may establish such branches or other offices as may be appropriate for the effective operation of its business.

SEC. 3.1. CORPORATE EXISTENCE; GENERAL CORPORATE POWERS.

Each bank for cooperatives shall be a body corporate and, subject to regulation by the Farm Credit Administration, shall have power to—

(1) Adopt and use a corporate seal.

(2) Have succession until dissolved under the provisions of this Act or other Act of Congress.

(3) Make contracts.

(4) Sue and be sued.

(5) Acquire hold, dispose, and otherwise exercise all of the usual incidents of ownership of real and personal property necessary or convenient to its business.

(6) Make loans and commitments for credit, provide services and other assistance as authorized in this Act, and charge fees therefor.

(7) Operate under the direction of its board of directors.

(8) Elect by its board of directors a president, any vice presidents, a secretary, a treasurer, and provide for such other officers, employees, and agents as may be necessary, including joint employees as provided in this Act, define their duties and require surety bonds or make other provisions against losses occasioned by employees.

(9) Prescribe by its board of directors its bylaws not inconsistent with law providing for the classes of its stock and the manner in which its stock shall be issued, transferred, and retired; its officers, employees, or agents elected or provided for; its property acquired, held, and transferred; its loans made; its general business conducted; and the privileges granted it by law exercised and enjoyed.

(10) Borrow money and issue notes, bonds, debentures, or other obligations individually or in concert with one or more other banks of the System, of such character, and such terms, conditions, and rates of interest as may be determined.

(11)*(A)* Participate in loans under this title with one or more other banks for cooperatives and with commercial banks and other financial institutions upon such terms as may be agreed among them and participate with one or more other Farm Credit System institutions in loans made under this title or other titles of this Act on the basis prescribed in section 4.18 of this act.

(B)(i) Participate in any loan of a type otherwise authorized under this title that is made to a similar entity by any institution in the business of extending credit, including purchases of participations in loans to finance international trade transactions involving the sale of agricultural commodities or the products thereof, except that—

(I) a bank for cooperatives may not participate in a loan—

(aa) if the participation would cause the total amount of all loan participations by the bank under this subparagraph involving a single credit risk to exceed 10 percent of the bank's total capital; or

(bb) if the participation by the bank will itself equal or exceed 50 percent of the principal of the loan or, when taken together with participations in the loan by the other banks for cooperatives under this subparagraph, will cause the cumulative amount of the participations by all banks for cooperatives in the loan to equal or exceed 50 percent of the principal of the loan;

(II) a bank for cooperatives may not participate in a loan to a similar entity under this subparagraph if the similar entity has a loan or loan commitment outstanding with a Farm Credit Bank or an association chartered under this Act, unless agreed to by the Bank or association; and

(III) the cumulative amount of participations that a bank for cooperatives may have outstanding under this subparagraph at any time may not exceed 15 percent of the bank's total assets.

(ii) For the purposes of this subparagraph, the term 'similar entity' means an entity that, while not eligible for a loan under section 3.8, is functionally similar to an entity eligible for a loan under section 3.8 in that it derives a majority of its income from, or has a majority of its assets invested in, the conduct of activities functionally similar to those conducted by the entity.

(iii) With respect to similar entities that are eligible to borrow from a Farm Credit Bank or association under title I or II, the

authority of a bank for cooperatives to participate in loans to the entities under this subparagraph shall be subject to the prior approval of the Farm Credit Bank or Banks in whose chartered territory the entity is eligible to borrow. The approval may be granted on an annual basis and under such terms and conditions as may be agreed on between the bank for cooperatives and the Farm Credit Bank or Banks that serve the territory.

(12) Deposit its securities and its current funds with any member bank of the Federal Reserve System or any insured State nonmember bank (within the meaning of section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) or, to the extent necessary to facilitate transactions which may be financed under section 3.7(b) of this Act, any other financial organization, domestic or foreign, as may be authorized by its board of directors, and pay fees therefor and receive interest thereon as may be agreed. When designated for that purpose by the Secretary of the Treasury, it shall be a depository of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary; may be employed as a fiscal agent of the Government, and shall perform all such reasonable duties as a depository of public money or financial agent of the Government as may be required of it. No Government funds deposited under the provisions of this subsection shall be invested in loans or bonds or other obligations of the bank.

(13)(A) Buy and sell obligations of or insured by the United States or of any agency thereof, or securities backed by the full faith and credit of any such agency and make such other investments as may be authorized under regulations issued by the Farm Credit Administration.

(B) As may be authorized by its board of directors, buy from and sell to Farm Credit System institutions interests in loans and in other financial assistance extended and nonvoting stock.

(C) As may be authorized by its board of directors, and solely for the purposes of obtaining credit information and other services needed to facilitate transactions which may be financed under section 3.7(b) of this Act, invest in ownership interests in foreign business entities that are principally engaged in providing credit information to and performing such servicing functions for their members in connection with the members' international activities.

(14) Conduct studies and adopt standards for lending.

(15) Amend and modify loan contracts, documents, and payment schedules, and release, subordinate, or substitute security for any of them.

(16) Exercise by its board of directors or authorized officers, employees, or agents all such incidental powers as may be necessary or expedient to carry on the business of the bank.

(17) As may be authorized by the board of directors, maintain credit balances and pay or receive fees or interest thereon, for the purpose of assisting in the transfer of funds to or from parties to transactions that may be financed under section

3.7(b) of this Act: *Provided, however,* That nothing herein shall authorize the banks for cooperatives to engage in the business of accepting domestic deposits.

(18) As may be authorized by its board of directors, agree with other Farm Credit System institutions to share loan or other losses, whether to protect against capital impairment or for any other purpose.

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SEC. 3.7. LENDING POWER.

(a) The banks for cooperatives are authorized to make loans and commitments to eligible cooperative associations and to extend to them other technical and financial assistance *at any time (whether or not they have a loan from the bank outstanding)*, including but not limited to discounting notes and other obligations, guarantees, currency exchange necessary to service individual transactions that may be financed under subsection (b) of this section, collateral custody, or participation with other banks for cooperatives and commercial banks or other financial institutions in loans to eligible cooperatives, under such terms and conditions as may be determined to be feasible by the board of directors of each bank for cooperatives under regulations of the Farm Credit Administration. Such regulations may include provisions for avoiding duplication between the Central Bank and district banks for cooperatives. Each bank may own and lease, or lease with option to purchase, to stockholders eligible to borrow from the bank equipment needed in the operations of the stockholder and may make or participate in loans or commitments and extend other technical and financial assistance to other domestic parties for the acquisition of equipment and facilities to be leased to such stockholders for use in their operations in the United States.

(b) A bank for cooperatives is authorized to make or participate in loans and commitments to, and to extend other technical and financial assistance to (1) a domestic or foreign party with respect to its transactions with an association that is a voting stockholder of the bank for the export or import of agricultural commodities, farm supplies, or aquatic products through purchases, sales or exchanges, and (2) a domestic or foreign party in which such an association has at least the minimum ownership interest approved under regulations of the Farm Credit Administration for the purpose of facilitating the association's export or import operations of the type described in clause (1) of this subsection: *Provided*, That a bank for cooperatives determines, under regulations of the Farm Credit Administration, that the voting stockholder will benefit substantially as a result of such loan, commitment, or assistance.

(c) Loans, commitments, and assistance authorized by subsection (b) of this section shall be extended in accordance with policies adopted by the board of directors of the bank under regulations of the Farm Credit Administration.

(d) The regulations of the Farm Credit Administration implementing subsection (b) of this section and the other provisions of this title relating to the authority under subsection (b) of this section may not confer upon the banks for cooperatives powers and authorities greater than those specified in this title. The Farm

Credit Administration shall, during the formulation of such regulations, closely consult on a continuing basis with the Board or Governors of the Federal Reserve System to ensure that such regulations conform to national banking policies, objectives, and limitations.

(e) Notwithstanding any other provision of this title, the banks for cooperatives shall not make or participate in loans or commitments for the purpose of financing speculative futures transactions by eligible borrowers in foreign currencies.

(f) The banks for cooperatives may, for the purpose of the installation, expansion, or improvement of water and waste disposal facilities in rural areas, make and participate in loans and commitments and to extend other technical and financial assistance to—

(1) cooperatives formed specifically for the purpose of establishing or operating such facilities; and

(2) public and quasi-public agencies and bodies, and other public and private entities that, under authority of State or local law, establish or operate such facilities.

For purposes of this subsection, the term "rural area" means all territory of a State that is not within the outer boundary of any city or town having a population of more than 20,000 based on the latest decennial census of the United States.

TITLE IV—PROVISIONS APPLICABLE TO TWO OR MORE CLASSES OF INSTITUTIONS OF THE SYSTEM

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PART D—ACTIVITIES OF INSTITUTIONS OF THE SYSTEM

[SEC. 4.15. NOMINATION OF ASSOCIATION DIRECTORS; REPRESENTATIVE SELECTION OF NOMINEES.

[Each production credit association]

SEC. 4.15. NOMINATION AND ELECTION OF BANK AND ASSOCIATION DIRECTORS.

(a) NOMINATION OF DIRECTORS.—Each production association and each Federal land bank association shall elect a nominating committee by vote of the stockholders at the annual meeting to serve for the following year. Each nominating committee shall review lists of farmers from the association territory, determine their willingness to serve, and submit for election a slate of eligible candidates which shall include at least two nominees for each elective office to be filled. In doing so, the committee shall endeavor to assure representation to all sections of the association territory and as nearly as possible to all types of agriculture practiced within the area. Employees of the association shall not be eligible to be nominated, elected, or serve as a member of the board. Nominations shall also be accepted from the floor. Members of the board are not eligible to serve on the nominating committee. Regulations of the Farm Credit Administration governing the election of bank directors shall similarly assure a choice of two nominees for each elective office to be filled and that the bank board represent as nearly as possible all types of agriculture in the district.

(b) SECTIONAL REPRESENTATION ON BANK AND ASSOCIATION BOARDS.—

(1) In general.—In order to ensure representation of sections within the territory served by each bank or association of the System, each such bank (other than the National Bank for Cooperatives) and association may include in its bylaws providing for the election of its board of directors, provisions for election of one or more members of the board (other than the member of the board who is elected by the other members of the board) from designated sections within the territory served by the bank or association, rather than for the election of all of the members of the board on an at-large basis.

(2) Combined bases.—Nothing in this subsection shall be construed to prohibit any such bank or association from providing, in its bylaws, for the election of some of the members of its board on a sectional basis and others on an at-large basis.

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